Saskatchewan Workers' Compensation Act Review Committee

Report of the Workers' Compensation Act Review Committee

September 1986

Saskatchewan

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Workers' Compensation Act Review Committee

670 Toronto Dominion Building
1914 Hamilton Street
Regina, Saskatchewan
S4P 4V4

September, 1986

The Honourable Grant Schmidt,
Minister of Labour,
Legislative Building,
Regina, Saskatchewan.

Dear Sir:

We are pleased to present our report on the Review of the Workers' Compensation Act, 1979.

Respectfully,

Judge A. J. Muir,
Chairperson.

Mr. N. Brown,
Member.

Mr. W. Norheim,
Member.

Mr. E. Antonini,
Member.

Mrs. V. Kutzan,
Member.

Mr. G. Maxwell,
Member.

Mr. G. Munt,
Member.

Mr. D. Magnan,
Member.

Mr. G. Zaba,
Member.

Table of Contents

	Recommendations	Page 1
	Preface	Page 9
Chapter 1	**The Foundation of Saskatchewan's Workers' Compensation System** Development of Workers' Compensation — Principles of Workers' Compensation	Page 11
Chapter 2	**Deeming as a Factor in Determining Wage Loss Compensation** Dissatisfaction with the Present Practice of Deeming — Development of the Income Maintenance System — Wage Loss Support Guaranteed — Return to Original Intent Needed	Page 17
Chapter 3	**Benefits** Surviving Spouses — Funeral Allowance — Maximum Wage Rate — Maintenance of Unemployment Insurance and Canada Pension Plan Contributions — Canada Disability Pension — Independence Allowance — Pre-Existing Condition — Interim Child Care and Domestic Support — Payout in Lieu of an Annuity — Legislative Conflict — Allowance for a Foster Parent	Page 23
Chapter 4	**Rehabilitation** Workers' Compensation is More Than a System of Monetary Compensation — **Physical Restoration** — Timeliness of Treatment — Rehabilitation Facilities — Need for Additional Services Immediately — Outreach Program — Shortage of Professional Staff — In-Service Training — **Return to Employment** — Arbitrary Dismissal — Training — Need for a Career Counsellor — Job Placement — Cost Considerations	Page 31
Chapter 5	**Accident Prevention** Health and Safety Programs are Crucial to Reducing Compensation Claims — **Relationship Between the Workers' Compensation Board and the Occupational Health and Safety Branch** — Exchange of Information — Funding Arrangement — **Improved Support for Occupational Health and Safety Committees — Operation of the Occupational Health and Safety Branch** — Inspections — Education and Training	Page 39
Chapter 6	**Medical Aspects of Compensation** Medical Boards — Medical Review Panel — Role of Nurses	Page 45
Chapter 7	**Communications with Injured Workers and Others** Quality of Communication — Not a New Problem — Communications with Injured Workers — Communication of Reasons for Decisions — Communications with Employers	Page 49
Chapter 8	**Workers' Compensation Board Organization and Administration** Composition of the Workers' Compensation Board — Assignment of Claims and Rehabilitation Officers by Specific Industry Groups — Administration of Benefits — Investment Policy	Page 55

Chapter 9	**Workers' Advocates**	Page 61
Chapter 10	**Scope of the Act** Farm Workers — Domestic Workers — Contractors and Subcontractors — Occupational Disease	Page 63
Chapter 11	**Other Considerations** Notification of Injury — Workers' Compensation Board as an Assignee — Approval of Regulations and Orders Made by the Workers' Compensation Board — Collection of Overpayments	Page 67
Chapter 12	**Accountability of the Workers' Compensation Board**	Page 69
Appendix 1	**Extract From Investment Review, November 29, 1985**	Page 71
Appendix 2	**Publicity and Schedule of Public Hearings**	Page 73
Appendix 3	**Organizations Appearing at the Public Hearings or Providing a Written Submission**	Page 77

Recommendations of the Workers' Compensation Act Review Committee

1 The general approach to deeming should be based on the recognition that it was originally designed to deal with exceptional circumstances. It was designed to provide a system of measuring income loss when the individual's income loss was clearly unrelated to the injury. Therefore the focus should be on the circumstances in which deeming is legitimate. Only four circumstances exist in which deeming is legitimate.

(a) The worker has refused an actual job offer within his or her physical limitations. In this case the basis for deeming is obvious — the salary of the job which the worker has refused.

(b) The worker has completed an appropriate rehabilitative training program. In this case the basis for deeming would be the average starting salary of the position for which he or she was trained.

(c) The worker has refused to take appropriate rehabilitation training. In this case, the basis for deeming would be the average starting salary of the position for which he or she would have been trained.

(d) The worker has voluntarily retired from the labour force — either through the acceptance of early retirement or through staying home for personal and financial reasons. This is the only situation where the exercise of some judgement is necessary for there may in fact not be an actual job which can be applied in deeming that individual.

2 In applying the principles outlined in Recommendation 1, an appropriate rehabilitation program will be defined as follows.

(a) A course of less than one year would never be considered an acceptable program. If the training course is less than one year then the Board would be required to "find a job." This does not mean the Board could not provide short-term training courses. They would simply be required to be certain that the graduate of a short-term training program is employed as a result of that training.

(b) If the course is twelve to twenty-four months in duration then the individual would be allowed six months for job search before the deeming would occur.

(c) If the course is longer than twenty-four months then the individual would be allowed three months for job search before deeming would occur.

3 Section 83(4) of the Act (surviving spouses — five year limit) should be amended based on the following premises to provide for more equitable treatment of surviving spouses. The spouse's income at the expiration of the initial period of benefits is to be compared to the entitlement the deceased spouse would have had had he or she been totally disabled (updated for inflation). Continuing benefits are to be based on the difference between the spouse's income at that time and the deceased spouse's entitlement. In keeping with the principle of wage loss replacement, the reference point used with regard to income is to be earned income only; it is not to include income from other sources, such as investment income or sale of assets.

4 The Workers' Compensation Board should immediately review its current interpretation of Section 83(4) with a view to implementing the principles contained in Recommendation 3.

5 When benefits have been paid to a surviving spouse for a period exceeding 24 consecutive months from the date of the fatality, an amount equal to 10% of the payments that have been made and are being made should be set aside by the Board, to provide an annuity for the spouse at age 65.

6 The death benefit should be increased to $3,500 effective January 1, 1989.

7 The present maximum wage rate of $48,000 should be maintained. However, in the event that economic conditions in Saskatchewan change dramatically before the next review and wage levels increase to the point where the $48,000 ceiling is no longer appropriate, the Workers' Compensation Board should recommend to the Legislature an increase in the maximum wage rate that would be fair and reasonable.

8 The provincial government should take immediate action to discuss the amendment of the regulations governing Unemployment Insurance and the Canada Pension Plan with other jurisdictions, with a view to persuading its federal counterpart to make the necessary changes that would allow contributions for each program to be made by the Workers' Compensation Board on behalf of injured workers and their pre-accident employer.

9 Benefits received by survivors under the Canada Pension Plan should not be deducted from compensation benefits and injured workers should be allowed to choose whether or not they wish to apply for the Canada Disability Pension. In order to implement these principles, Section 99(1) of the Workers' Compensation Act must be amended by: changing "periodic" to "disability"; deleting the words "death or"; changing the phrase "or dependant is then entitled to receive" to "is receiving"; and by deleting the phrase "or in determining the surviving spouse's entitlement".

Section 99(1) would therefore read as follows:

"99(1) On the expiration of 12 months from the date of commencement of the loss of earning capacity resulting from the injury, any disability benefits relative to the injury that a worker is receiving under the Canada Pension Plan or the Quebec Pension Plan, as amended from time to time, shall be considered as wages that the worker is capable of earning in calculating the compensation to be paid by the board for loss of earning capacity."

10 Section 67 of the Act should be amended to remove the provision pertaining to the indexation of the lump sum for permanent functional impairment and in conjunction Section 67.1 should be amended to remove the requirement that the independence allowance be available only to injured workers who are unemployable as a result of their injury.

11 The Workers' Compensation Board should present a report to the next committee of review that provides an analysis of the level of need and the costs associated with a program that would provide injured workers with an allowance where they cannot undertake routine tasks. Some information such as the number of independence allowances awarded, their amount and the percentage of permanent functional impairment of each recipient will be available from Board files. However, it is unlikely that these statistics alone will be sufficient, in which case a survey should be undertaken in order to fully determine the level of need.

12 The Workers' Compensation Board should expand its practice of covering child care expenses and expenses related to domestic help to include the situation where an injured worker incurs additional expense that would not have existed but for the injury.

13 Section 74(3) of the Workers' Compensation Act should be amended to provide that where the total of the amount set aside as an annuity and accrued interest is $5,000 or less when the worker reaches age 65, the worker shall be paid this amount in a lump sum. If the total exceeds $5,000 an annuity must be purchased.

14 Benefits paid to survivors should not be limited by a ceiling. Section 93 of the Workers' Compensation Act should therefore be repealed.

15 To enable the Board to make an additional allowance to a foster parent, Section 86 of the Workers' Compensation Act should be amended by adding to it the following: "and in addition any sum that the Board may determine until the child attains age 18."

16 Where the Board knows an injury is serious enough to require rehabilitation, personal contact should be made within 30 days of the submission of the accident report. In other cases where the Board automatically refers injured workers to the rehabilitation department after 12 weeks of compensation, personal contact should be made at that time.

17 The committee commends the Government of Saskatchewan for commencing construction on the new Wascana Rehabilitation Centre and recommends that the treatment of injured workers should continue to be a major function of the new facility.

18 The Department of Health and the Wascana Rehabilitation Centre Board should proceed as quickly as possible to hire physiotherapists and occupational therapists to staff physiotherapy units at hospitals where such facilities may be currently underutilized.

19 The Department of Health, Wascana Rehabilitation Centre Board and the Workers' Compensation Board should explore the possibility of establishing temporary treatment centres and, where possible, advance the purchase of equipment needed for the new rehabilitation centre for use in these temporary treatment centres.

20 To provide broader treatment for injured workers, particularly those who do not need acute care treatment, the Workers' Compensation Board should develop an outreach program with the objective of providing lower level treatment to injured workers closer to their own communities.

21 The government should move immediately to increase the intake of students at the school of physiotherapy by five and move as quickly as possible to restructure the program to accomodate a further ten students per year.

22 A school of occupational therapy should be established in Saskatchewan to help alleviate the shortage of therapists as well as provide increased opportunities for students to pursue careers in this occupation.

23 Appropriate training programs should be developed to assist those involved in providing rehabilitation treatment to understand and deal with injured workers. Such training programs should be included in the program of the new Wascana Rehabilitation Centre.

24 The Department of Labour should provide legislative protection for injured workers against unjust dismissals which occur soley as a result of a worker suffering a work-related injury.

25 The Board should focus on training and retraining programs for injured workers as a priority for rehabilitation; and training programs approved by the Board must have the objective of providing a suitable occupation for the worker.

26 An injured worker should be actively involved in developing a training program and selecting appropriate courses for that program. The success of the program will depend upon the extent to which he or she is committed to it. That committment cannot be secured without the active involvement of the worker.

27 The Workers' Compensation Board should hire a career counsellor to assist the rehabilitation officer and the injured worker in reviewing employment opportunities, setting employment objectives and selecting appropriate training programs.

28 Claims and rehabilitation officers should be assigned claimants on the basis of specific industry groups where practical.

29 In order to facilitate placement of injured workers as well as provide expert advice with regard to training, a joint committee composed of employers, employees, unions as well as a career counsellor and rehabilitation officers, should be established in a suitable industry as a pilot project. This project would have a time limit during which it would be monitored and evaluated by the Workers' Compensation Board to determine its effectiveness. If successful, such committees could be established, where practical, in other industries.

30 The Workers' Compensation Board should make no distinction in approving training programs and granting subsidies between an employer who has an injured worker returning to work or an employer who hires an injured worker.

31 All rehabilitation costs should be charged to the industry group rather than the individual employer. No subsidy should be approved unless the training program is approved by the Board.

32 The definition of the Second Injury Fund should be broadened to include pre-existing conditions to protect employers who hire workers who have suffered disabling injuries.

33 The Occupational Health and Safety Branch should undertake an evaluation of its programs and staff complement and re-assess its priorities in light of available and potential resources.

34 The Workers' Compensation Board personnel should provide the Occupational Health and Safety Branch with information obtained from accident reports which by the nature of the accident, indicate a failure to follow accident prevention practices or possible contravention of the Occupational Health and Safety Act and Regulations. The incident should be investigated immediately by an occupational health and safety inspector and a report on the investigation should be referred back to the Workers' Compensation Board to be included in the injured worker's file.

35 Statistics from the Workers' Compensation Board should be constantly monitored by the Occupational Health and Safety Branch in order to identify those employers or industries having an unusual run of accidents in a short term of time or a higher than normal incidence of accidents over a longer period. The Branch should initiate action immediately to prevent further accidents or injuries.

36 The Occupational Health and Safety Branch should utilize statistics from the Workers' Compensation Board to identify on an annual basis those employers or industries which have a higher percentage payout to assessment ratio compared to the average for the industry and undertake an appropriate response aimed at improving their safety record.

37 A mechanism should be established to allow the Workers' Compensation Board under certain circumstances to provide extra funding to the Occupational Health and Safety Branch for special projects.

38 The Occupational Health and Safety Branch should continue with the policy previously in effect of providing education for members of local occupational health and safety committees. The co-chairpersons of committees should be further educated as to the role and duties of committees.

39 Where it is necessary to develop specialized training concerning hazards which are specific to a particular industry or an individual workplace the Occupational Health and Safety Branch should assist committees by either providing or co-ordinating the provision of such training.

40 The Occupational Health and Safety Branch should provide more support to occupational health committees by way of research into areas identified by the committees. If necessary, extra funding for research on defined projects should be secured by the Branch from the Workers' Compensation Board.

41 The Occupational Health and Safety Branch should vigorously enforce existing legislation, including the posting of the Act and copies of notices, bulletins and inspection reports; and ensuring that committees are established in workplaces where there are more than ten employees and that a copy of minutes of committee meetings are being forwarded to the Branch. In every workplace the phone numbers of the Occupational Health and Safety Branch and its inspectors should be readily available to the co-chairpersons; these numbers should also be posted.

42 To facilitate the effective functioning of occupational health and safety committees, the Branch should re-emphasize and enforce the equality of co-chairpersons to prohibit unreasonable unilateral action by either co-chairperson.

43 Every establishment in the province with more than ten employees should be visited by an official of the Occupational Health and Safety Branch at least every two years.

44 The Occupational Health and Safety Branch should develop a basic course in accident prevention which will be made available to employers and employees across the province — especially smaller companies which do not have ready access to this type of training. The presentation would be made by Occupational Health and Safety personnel.

45 The Workers' Compensation Board should limit the use of the medical boards and more fully utilize its own medical staff. A conscientious effort must be made by Board doctors to secure an outside specialist's opinion on a medical question where necessary.

46 The Workers' Compensation Board should make more frequent use of the medical review panel to obtain a final settlement of a disputed claim.

47 Where an accident occurs in a remote area and a medical doctor is not readily available the Workers' Compensation Board should initiate a claim for compensation on the basis of an accident report filed by a nurse.

48 The Board should immediately engage the services of a consulting firm to review the state of existing communications and to advise the Board on all aspects of its communications.

49 The senior management of the Workers' Compensation Board should provide instruction to all Board employees on the steps that are to be taken to correct the serious deficiencies now existing in the quality of both written and oral communications.

50 The members of the Board should make regular periodic checks of correspondence to ensure that a high standard of communication skills is being maintained by all Board employees.

51 New Board employees who are required in the course of their duties to communicate orally or in writing with injured workers, employers and others should be given instruction in communications and ongoing in-service training should be given to all employees.

52 Written decisions of the Board or any of its employees must contain the essential ingredients as outlined on pages 51 and 52 of this report.

53 The Board should provide to the employer of any claimant a copy of any written decision made by the Board or any of its employees that has been communicated to the claimant.

54 A senior employee of the Board should be designated as the staff member authorized to give an employer, on request, the reasons for any decision made by the Board or any of its employees with respect to a claim by an employee of that employer; or to give to the employer, on request, any supplementary information with respect to the reasons for a decision on a claim in addition to what is contained in the letter to the employee, but the designated staff member must be bound by the rules of confidentiality referred to earlier in this chapter.

Where information is given to the employer that was not previously given to the employee, the additional information that was given to the employer shall be communicated in writing to the employee.

55 Major decisions by the Board with respect to claims, as well as major Board orders or directives to its staff regarding policy or procedural matters should be made public.

56 The Workers' Compensation Act should be amended to stipulate that the Board consist of a chairman and other members who are equally representative of management and labour.

57 Payment of all wage loss benefits should be maintained by the claims department and monies paid as wage loss benefits should not be accounted for as part of the cost of rehabilitation.

58 A complete review of the Workers' Compensation Board's investment policies should be undertaken, including:

a) the setting of long term requirements and objectives;

b) the procedure required to ensure consistent management of the portfolio; and

c) the monitoring of investment performance.

The creation of an investment advisory committee composed of members from outside the Board and its staff would facilitate the setting of a long term strategy and provide the discipline required to adhere to the policy.

59 The Workers' Compensation Board's Annual Report should include an investment review similar to the annual statements provided to pension fund sponsors and beneficiaries to provide more accurate information with regard to the administration and management of the fund's investments.

60 The Department of Labour should undertake a comprehensive review of the Workers' Advocates Office with the short term objective being to reduce the backlog of cases and, for the longer term, to establish administrative procedures which will ensure such a backlog does not develop again and will further ensure a continuing dialogue between the office and the Workers' Compensation Board.

61 Farm workers should be included under the scope of the Workers' Compensation Act.

62 Full-time domestics (those working for one employer for more than 24 hours a week) should be included under the scope of the Workers' Compensation Act.

63 A contractor should continue to be responsible for assessments with respect to a subcontractor in accordance with the Act. In addition, the Workers' Compensation Board should create fully funded subclasses for independent subcontractors to ensure their operations do not affect the safety record of the contractor.

64 The Workers' Compensation Board should consult with the contractor in order to determine the labour content of the contract. The appropriate assessment on only the labour portion of the project should not be added to the contractor's account until seven days after it has been agreed to by the Board and the contractor.

65 The Workers' Compensation Board should improve its monitoring of employers with delinquent accounts so that information is readily available to contractors when clearances are requested.

66 The Workers' Compensation Board and the Workers' Advocates office should have computer terminals linking each to the Canadian Centre for Occupational Health and Safety database. Any worker involved in an appeal should be given the opportunity to use this database to help him or her in preparing his or her appeal. The availability of these terminals should be noted in the Workers' Information Handbook on Workers' Compensation.

67 The Workers' Compensation Act should be amended to require that employees and employers must report an injury within five working days after becoming aware of its occurrence.

68 In cases of work-related accidents resulting in death, the Workers' Compensation Board should be able to commence an action in its own name without complying with the procedures outlined in the Fatal Accidents Act.

Section 40 subsection (a) of the Workers' Compensation Act should be amended to read as follows:

"40 (a) bring an action in its own name to recover the amount of the compensation payable notwithstanding any provisions of The Fatal Accidents Act; or".

69 The Workers' Compensation Board should not be required to obtain Cabinet approval for Board orders. Section 181 of the Workers' Compensation Act should be amended by deleting the words "or orders", to require Cabinet approval only for regulations made by the Board.

70 The Workers' Compensation Board should be empowered to recover overpayments made to injured workers. The Workers' Compensation Act should be amended by adding the following. This would be a new section to follow Section 180 in the Miscellaneous portion of the Act.

> "When compensation payments have been made by the Board to a worker or dependent in an amount in excess of that to which he or she is entitled, the amount of the overpayment may be recovered by the Board."

71 Section 162 of the Act should be amended by adding a provision requiring the Board to file each year with the Minister a report to be tabled in the Legislature showing the progress made by the Board towards implementing the recommendations of the present and subsequent committees in so far as it is within the power of the Board to implement such recommendations. The report should also include an explanation for any delay in implementing the recommendations. This report should be submitted to the Minister before the anniversary date on which the review committee's report is made public.

Preface

Section 162 of the Workers' Compensation Act, 1979, provides that the Lieutenant Governor in Council shall, at least every four years, appoint a committee of review consisting of five or more members as the Lieutenant Governor in Council may determine, to review and report upon any matters concerning the Workers' Compensation Act and the Regulations that the Lieutenant Governor in Council may specify.

Under the authority of that section of the Act, the Lieutenant Governor in Council, by Order in Council No. 1097/85 dated 28th October 1985, established "a committee, to be known as the Workers' Compensation Act Review Committee for the purpose of reviewing and reporting on all matters concerning The Workers' Compensation Act, the Regulations made thereunder and the administration thereof".

The following persons were appointed to the committee: A. J. Muir, Moose Jaw, (Chairperson); Wes Norheim, Regina, Saskatchewan Federation of Labour (Acting Chairperson); Gerry Munt, Regina, Saskatchewan Federation of Labour; Greg Zaba, Regina, Saskatchewan Building Trades; Virginia Kutzan, Prince Albert, Saskatchewan Union of Nurses; Eric Antonini, Saskatoon, President, Antonini & Sons Ltd.; Norm Brown, Regina, Plant Manager, Degelman Industries Ltd.; Denis Magnan, Saskatoon, Benefits and Compensation Director, Federated Co-operatives Ltd.; and Glenn Maxwell, Saskatoon, Industrial Relations Superintendent, Potash Corporation of Saskatchewan.

The following persons were appointed by the Department of Labour to act as support staff for the committee: John Boyd, Executive Secretary; Leanne Hannah, Research Officer; Laurie Hannan, Clerical.

The committee placed great emphasis on the need for consultation with the public, in particular injured workers and employer and employee groups, as well as others directly or indirectly involved with the workers' compensation system. As it was important to the committee that they hear from those who had first-hand experience with the system, it was determined that public hearings would be held as part of the review process.

In order to achieve this, the committee sent out over 1,400 letters to individuals, business associations, organizations and trade unions, inviting their participation in the review process by way of written submissions and/or oral presentations at the hearings. The individuals contacted by the committee were those who had opened a file with the Workers' Advocates since January, 1982 or had received a lump sum payment of $1,000 or more since 1982. In addition, the committee advertised in the daily and weekly press throughout Saskatchewan to announce the review to the public and to encourage written and/or oral submissions.

Public hearings were held in Regina during the week of March 17, 1986, and in Saskatoon and Prince Albert the week of April 14, 1986. During the course of the review, the committee received a total of 33 submissions from organizations, of which 26 were oral presentations; and from individuals, 258 submissions, of which 129 were oral presentations.

The committee wishes to thank all organizations and individuals for their submissions, which have been given due consideration by the committee in the course of its deliberations following the public hearings. The recommendations in this report are designed to address the issues that were brought to our attention through these written and oral submissions.

The degree of consensus among the groups who presented their views to the committee and a strong desire on its part to reach agreement on many of the thornier issues raised, meant that the committee,

which includes representation from both employers and organized employees, was able to achieve consensus on every issue.

This report is an unanimous report. There is no minority report. The committee is proud of that accomplishment.

Chapter 1

The Foundation of Saskatchewan's Workers' Compensation System

Workers' compensation touches the lives of a considerable number of working people in Saskatchewan. During 1985, 37,437 injury claims were settled by the Workers' Compensation Board. Injuries involving time loss from work of less than one day represented 55.4 per cent of the claims, while temporary impairment, or time loss beyond one day, represented 43.7 per cent of the claims. Focusing on the total number of temporary impairment injuries, time loss from work was three weeks or less in 66.8 per cent of the cases, and twelve weeks or less in 88.7 per cent of the cases. The twelve week period is significant because the claims department of the Board automatically refers an injured worker to the rehabilitation department after twelve weeks of compensation. Injuries involving time loss of less than one day as well as those involving temporary impairment represent 99.1 per cent of all claims settled in 1985. The remaining 0.9 per cent represents claims settled of workers who suffered permanent impairment or were fatally injured. Three hundred and eighteen claims settled in 1985 were for permanent impairment while 25 involved fatalities.

These statistics tell only a small part of the story however. While they dispassionately illustrate the very large number of workers who receive workers' compensation, they do not illustrate the impact of those injuries on the individual. Even though an injury may be classified as one resulting in temporary impairment or a low percentage permanent impairment, it may have a continuing impact on a person's ability to work. The injury may have healed for the purposes of compensation but his or her life and work will continue to be affected.

For some workers the whole experience can be very trying. Adjudicating injuries is a difficult task in which Board employees must rely not only on medical facts but on judgement. To the individual it sometimes involves a bewildering array of people — claims officers, rehabilitation officers, doctors, workers' advocates, not to mention others involved in the appeal process. Often injured workers feel they have not been dealt with properly. Following an injury they become part of a very large, complex system which, in dealing with over 37,000 people a year, appears to some as insensitive to their needs. It is this conflict between individuals and the compensation system that is of primary concern to the review committee.

The very nature of the review process is to focus on problems, but we would be less than fair if we did not mention the positive comments received. During the course of the public hearings the committee was told that compensation benefits in Saskatchewan are among the best in Canada. Business organizations were particularly pleased with the fact that the actuarial basis of the fund is sound and that assessments by and large are fair. They are also pleased with the way the Board has modified the structure of assessments to better relate to specific industrial sectors.

Individuals by and large were satisfied with the benefits provided by legislation. The problems they experienced were usually a result of the way in which the legislation was interpreted, rather than the legislation itself. Over the past four years a number of improvements have been made regarding benefits and access to information. Benefit levels were increased for those workers injured prior to the new Act in 1979 to ensure they would not fall below the benefit levels of workers injured after December 31, 1979. The conversion to net income from gross income as the basis for compensation benefits was effected September 1, 1985 and is seen as a more equitable treatment of earnings. In addition to an increase in the maximum wage rate to

$48,000, benefits have been improved with regard to dependent spouses and children, lump sum payments and the introduction of an independence allowance. Lastly, as of September 1, 1985 workers have had access to claims information placed in their files after that date, for the purpose of appeals.

Development of Workers' Compensation

Workers' compensation in Saskatchewan has existed since 1911 but the foundation for our current system was set out in a Royal Commission report in 1930 and incorporated into the Workmen's Compensation (Accident Fund) Act, 1930. The far-sighted nature of this Act and the basic principles around which it was built are evidenced by the fact that 56 years later the basic approach used in the Saskatchewan Act remains unchanged.

The legislation provided for a no-fault insurance system based on collective liability. Essentially, as has been stated many times in the past, workers' compensation represents a contract or agreement between employers and employees in which both sides, dissatisfied with the vagaries of the common-law approach to recompense for employment injury, established an alternative system. The employer agreed to provide the employee with security against income loss from an accident, regardless of fault. In return he gained immunity from lawsuits, with all the problems attendant upon that approach. Compensation was based on the percentage of disability suffered by the injured worker as a result of a work related accident. This percentage of disability was translated into a lifetime pension based on the earnings of the worker at the time of the accident.

For both the employer and the employee the agreement was a bargain well struck. Employers faced a great deal of uncertainty with respect to liability, which made the cost of doing business impossible to estimate. Private liability insurance was expensive and not all employers purchased insurance. This brought charges of unfair competition and created friction within the business community. More importantly, a large compensation award to a worker could force a business into bankruptcy.

On the other hand, the employee agreed to relinquish his right to common-law action in return for the certainty of benefits, as established by the Legislature. The inadequacies of common-law action to the employee were of equal concern. He must prove fault. He must meet the costs of court action until the final settlement. In addition to the great difficulty in determining fault, delays were inevitable and expenses were high. To the workers with a short term or temporary disability, who made up the majority of injured workers, the process was particularly time consuming and unnecessarily expensive. The inevitable result of common-law action was that some workers received large amounts of money while most workers received little or nothing.

Over the next 44 years workers' compensation expanded with the growing Saskatchewan economy as more industries were included in the system. A major rewriting of the Act took place in 1955. While the new Act did not change key features of workers' compensation, it did result in clearer legislation. The Act was again rewritten in 1974. Compensation payments were increased to bring benefits up to more realistic levels in light of inflation, coverage of occupations was expanded and the term worker replaced workmen to acknowledge the growing participation of women in the labour force. During the 1970's it became evident that a new approach to workers' compensation was needed. According to the 1978 report of the committee of review, it was necessary to "update the original contract and bring it more into line with present day realities." Those realities include a vastly changed labour force that has become not only much larger but more complex in its composition, making it impossible to predict the impact of an injury on a person's employability. A similar injury may affect two people quite differently — it might destroy one person's career while having little impact on the other. Secondly, advances in rehabilitative medicine have increased the chances of returning injured workers to the labour force. This not only increases the obligations on society to provide rehabilitative services to workers, but also further erodes the concept that one can determine the economic impact of an injury in advance. Thirdly, the social security system has undergone major changes with new programs such as

universal medical insurance being implemented as others are expanded. Fourthly, society has begun to accept a situation of steady and persistent inflation eroding the purchasing power of long term pensions and requiring an ongoing system for dealing with this problem. Finally, the increased knowledge of industrial hazards and their impact on a person's health have served to blur the line between a work related and a non-work related injury.

The result of the 1978 review was the development of a new set of objectives, based on the original principles, designed to chart a fresh course in line with the eighties and beyond. In establishing these objectives the 1978 review committee commented: "While fully conscious of the nature of the challenge which this situation presented, we remain convinced that there must and could be found a concept and system of workers' compensation which would be reasonably satisfactory to both groups. A mutually satisfactory legislative mechanism for dealing with the rights and obligations of workers and employers respectively in the matter of compensation for injuries sustained at work is in our view, as essential to the attainment of reasonable harmony in the workplace as a mutually satisfactory collective bargaining agreement covering the many other important rights and obligations arising out of the employer-employee relationship".

The Workers' Compensation Act, 1979 introduced a basic and very significant change in the whole method of computing benefits under the Act. Prior to the 1979 legislation every worker who sustained a particular injury was paid the same percentage of salary regardless of his or her occupation and regardless of the extent of earning loss. To quote the 1982 report of the committee of review: "The new Act was designed to come to grips with the reality that two workers who suffer the same injury do not necessarily suffer the same loss of earning capacity." Under the new Act, benefits are payable not for the injury itself but for loss of income, if any, suffered by the worker as a result of the injury.

Principles of Workers' Compensation

The 1979 legislation was barely in place before the review committee of 1982 was charged with the task of reviewing the new system. That committee felt a special responsibility to ascertain whether the new system was working to the satisfaction of both employers and employees. Six years have now passed since the introduction of the new system and the present review committee once again has the task of ascertaining how well the new system is working.

Early on in the review it became evident to the committee that certain concerns expressed at the hearings brought into question some of the basic principles which have been considered to be central to the concept of workers' compensation. One of these concerns involves the right of individuals to pursue a claim in the courts. This is an issue that strikes at the very heart of workers' compensation, for if individuals were allowed recourse to the courts our compensation system would be destroyed. The individuals who raised this concern did so primarily out of frustration over what they perceived to be unfair treatment by the compensation system or delays in the compensation process. When the original deal over compensation was struck both the employer and employee representatives realized that some workers would receive less in the way of compensation than would be possible through the courts, but more importantly, a far greater number of injured workers, who might otherwise receive nothing, would be guaranteed compensation if the injury was related to their employment. The committee believes this deal was, and remains to this day, in the best interests of all workers, and the principle upon which it is based is as valid today as it was in 1930.

The second concern involves the right of the employer to intervene in the process of claims adjudication. The employers who raised this concern did so because they were unable to determine how decisions with respect to claims were arrived at. They felt this was particularly a problem where a decision was contrary to information they had supplied. In other words they felt ignored in the adjudication process. One of the principles of our system of compensation is that the employer does not actively participate in the adjudication of claims. That is the responsibility of the Workers' Compensation Board. This does not mean however that the employer does not have the right to know what decisions

have been taken with respect to a claim as well as the rationale for each decision. The committee strongly believes in the employers' right to know and feels that if reasons for decisions are clearly stated and communicated to all parties, the need to intervene in the adjudication process will not exist.

The third concern involves appeals outside the Board. Some individuals and employers feel they would be better served if the Board was not involved in appeals because of their responsibility for claims adjudication. The legislation is clear however in conferring on the Board the responsibility for appeals. The committee agrees for two reasons. The first is that appeals outside the Board would result in a backlog of cases because advocates for both sides would become involved and more time would be taken up in arguing each case. The injured worker would suffer because settlement of his or her claim would be delayed. The second reason is that an independent appeal body would not have the expertise the Board possesses. This would also result in a longer appeal process and again the injured worker would suffer. The committee believes that appeals should remain the responsibility of the Workers' Compensation Board.

Having discussed the foundation of workers' compensation, as well as the major developments, it seems appropriate that the committee should at this, the beginning of the report, set forth the principles which it agrees form the basic components of our system of workers' compensation.

1. **The Workers' Compensation Act is, in essence, a legislated collective agreement between employers and employees whereby workers are compensated for loss resulting from injury or disablement arising out of and in the course of their employment;**

2. **The compensation fund is maintained solely by employers through premiums assessed by the Workers' Compensation Board;**

3. **Compensation is payable regardless of whether the injury or disability giving rise to the loss was caused by the fault of the employer, the worker, or a co-worker; consequently, the arrangement prohibits lawsuits by workers against their employers or co-workers;**

4. **The duty of determining eligibility and adjudicating claims is delegated to the Workers' Compensation Board. Apart from the duty to give the Board all information in his or her possession that is pertinent to the claim, the employer is not an active participant in the process of adjudication and adjustment of claims and does not intervene in that process;**

5. **All questions regarding eligibility for compensation and all other questions that arise following the determination of eligibility are finally settled within the Board structure; there is no appeal to the courts or any other extraneous body;**

6. **Through the medium of the compensation fund, the obligation of employers is to provide to injured or disabled workers the following:**

   a) **compensation in such amount as will ensure that the injured or disabled worker's income does not, by reason of such injury or disability, fall below the approximate level of that worker's pre-injury/disability income from employment;**

   b) **the cost of medical and other professional services reasonably required to enable the worker to recover physically and psychologically to the extent that such recovery can be achieved; and**

   c) **such rehabilitative or other measures as can practically be undertaken with a view to making it possible for the worker to return to his or her former employment or to equip the worker to engage in alternative suitable and available employment.**

7. **The obligation of the employee is to avail himself or herself of appropriate medical or other assistance and appropriate training or other rehabilitative measures provided by the Board and to return, when sufficiently recovered, to suitable and available employment.**

It is the view of the committee that the principles enunciated above form the framework of a sound workers' compensation system in this province and that the Act and Regulations must be consistent with these principles. Nevertheless, the Act and Regulations, however carefully they may be drawn and however fair their provisions may be, will not provide a satisfactory system of compensation unless the Workers' Compensation Board, its department heads and employees are committed to administering the Act and Regulations in such a manner that the rights of both employers and employees are fully protected and that the true spirit and intent of the legislation is carried into effect. It is for this reason that the committee, through its deliberations, has been concerned not only with the legislation but also, perhaps more importantly, with the way in which the legislation has been interpreted and administered.

Chapter

2 Deeming as a Factor in Determining Wage Loss Compensation

Dissatisfaction with the Present Practice of Deeming

As noted in Chapter 1, the Workers' Compensation Act, 1979, brought about a fundamental change in workers' compensation in this province. Prior to the enactment of that legislation, the focus of compensation was on the worker's injury; he or she was paid a pension based on the percentage of disability sustained. The thrust of the 1979 Act was to compensate the worker for loss of earning capacity resulting from the injury.

In the course of the committee's discussions with employer and employee groups and individuals no serious objection has been taken to the system of compensation introduced by the 1979 Act. There have, however, been numerous complaints about the way in which the legislation is being interpreted and applied. In particular, many workers have expressed grave dissatisfaction about the manner in which the Board has been interpreting and applying Sections 68, 69 and 73 of the 1979 Act, the relevant portions of which are as follows:

> "68(1) Where injury to a worker results in a loss of earnings beyond the day of injury, the Board shall estimate the effect of the injury on the loss of earning capacity resulting from the injury and shall ensure compensation to the worker:
>
> (a) in the case of a worker who sustains an injury prior to the date this clause comes into force, in an amount equal to 75% of that estimated loss;
>
> (b) in the case of a worker who sustains an injury on or after the date this clause comes into force, in an amount equal to 90% of that estimated loss."
>
> "68(2) Compensation pursuant to subsection (1) is payable as long as the loss of earning capacity continues or until the worker attains the age of 65, whichever occurs first."
>
> "69 Subject to section 73, calculation of the loss of earning capacity for the purposes of subsection 68(1) shall be based on the difference between the worker's average weekly earnings at the commencement of his loss of earnings resulting from the injury, that amount not to exceed the maximum wage rate then in effect, and the earnings that the worker is estimated to be capable of earning at a suitable occupation after sustaining that injury."
>
> "73(1) Compensation being paid for loss of earning capacity under sections 68, 71 and 72 shall be reviewed annually and shall be based on the difference between:
>
> (a) the worker's average weekly earnings at the commencement of his loss of earnings resulting from the injury increased by the percentage increase of the Consumer Price Index, that amount not to exceed the maximum wage rate in effect at the time of the review; and
>
> (b) the earnings it is estimated the worker is then capable of earning as a result of the injury."

The specific complaints of workers regarding the way in which these sections of the Act are being interpreted and applied may be summarized as follows:

(1) That workers are being "deemed" by the Board to be capable of engaging in

work for which they are not qualified without first being given appropriate training.

(2) That workers are being "deemed" by the Board to be capable of obtaining employment at rates of pay that are unrealistic having regard to the going rates for the jobs in question.

(3) That workers are being "deemed" by the Board to be capable of obtaining work in fields of employment in which job opportunities simply do not exist.

The position of these workers is that, by "deeming" them capable of earning income which they say they are not, in fact, capable of earning, the Board is wrongfully reducing or, in some cases, cutting off altogether the income maintenance benefits which the 1979 legislation was supposed to guarantee to them.

The principle of income maintenance is, of course, the cornerstone of our post-1979 system of compensation. If the income maintenance sections of the Act are not being fairly and properly interpreted, the entire structure of workers' compensation is in danger of collapse. That makes "deeming" the most critical issue faced by the committee.

Development of the Income Maintenance System

To have a proper appreciation of the key role that income maintenance was intended to play in workers' compensation, it is helpful to recall the circumstances that led up to the change to an income maintenance system and the improvements that the new system was intended and expected to bring about.

Under the pre-1979 system, workers who sustained the same injury were considered, for compensation purposes, to have the same percentage of disability. Unquestionably persons who suffer the same injury do have the same disability, but the effect that disability has on earning capacity will vary from worker to worker, depending on the type of work the individual does. A good illustration of this point was given in the 1978 review committee report:

"A. An accountant suffers an injury and loses two fingers on his non-writing hand. His ability to perform his job is not affected. He is physically disabled, but **not** occupationally disabled.

B. An instrument technician, loses the same two fingers. His ability to work with tools and to earn a living doing so is sharply diminished. He has the same physical disability as the accountant but he is also occupationally disabled."

Under the former system, the compensation benefits of both workers were calculated on the basis of the same percentage of disability. The accountant, in the example given, continued to earn full salary and in addition received a lifetime disability pension based on a certain percentage of pre-injury income. The instrument technician received a lifetime pension based on the same percentage of pre-injury income, but the system did not take into account the fact that the earning capacity of the technician was severely impaired.

Although the Board did attempt to alleviate some of the worst cases of hardship by granting supplements, both the 1973 and 1978 review committees recognized that the then existing system did not provide adequate compensation for the worker who was occupationally as well as physically disabled. Each of these committees advocated a new system of compensation aimed chiefly at compensating the worker for loss of income resulting from the injury rather than for the injury itself. The proposed system was not really new, but actually represented a return to the original concept of workers' compensation, namely that it was a form of insurance designed to protect the worker from loss of income due to work injury.

Wage Loss Support Guaranteed

During the 1978 committee's public hearings, the pros and cons of the proposed system were discussed at length with employer and employee groups. Apparently there was a large measure of support for the proposed system from both employer and employee groups, despite the fact that the adoption of the proposed income maintenance system would obviously have a profound effect on both groups. Under the proposed new system

employers would be required to fund the additional costs involved in maintaining the occupationally disabled worker's income at pre-injury level. On the other hand, the proposed system would relieve employers of the very substantial costs of funding pensions for life for injured workers who, while physically disabled, were able to continue in the same or equivalent employment without loss of income. Additionally, the recommendations of both the 1973 and 1978 committees regarding the proposed new system were accompanied by recommendations for a greatly expanded program of rehabilitation — a program that was regarded by both committees as being an essential component of the income maintenance system. The employers would have every reason to expect that such a program would be aimed at retraining workers and placing them in suitable alternative employment, thereby reducing the amount of compensation the employers would be required to provide to cover loss of income.

The adoption of the proposed new system would have a profound effect on the worker also. Workers who, under the new system, suffered injuries which did not result in any permanent wage loss would lose the right to any compensation for their injuries other than a modest lump sum. It would, of course, be totally unreasonable to suggest that workers give up their rights under the existing legislation unless the new system provided new benefits in lieu of those that were to be given up. The new system, as proposed by both the 1973 and 1978 committees, promised precisely that — namely a guarantee of full compensation for wage loss attributable to injury for those workers who were unable to return to their former employment and who, on account of their injuries, were either unable to work or had to accept employment at less than their pre-injury earnings.

In recommending the new system, the 1978 review committee gave the following example of how it would work:

> "Worker A is earning $1,000 a month. He is injured at work and receives compensation for temporary disability. The injury is very serious and leaves a permanent physical impairment. The level of income maintenance he will receive is based not on his degree of impairment but on his income loss. If the injury is so severe that he is unable to return to work, he is eligible for full income maintenance. If, because of the injury, he is able to return to work but must accept a lower salary, he is eligible for the difference between full income maintenance and his new salary.
>
> If, on the other hand, he returns to employment at the same or higher salary, he receives no income maintenance. If the worker's circumstances change then the level of income maintenance is adjusted accordingly. The trade-off here is that instead of receiving a pension for life based on a medical rating of disability (the present system), the worker is guaranteed that, **because of his injury**, his total income will never fall below the level of full compensation at the time of his injury, with some adjustment for inflation."

The 1973 committee made the following comments on income maintenance:

> "We would suggest that all individuals who receive a serious injury should receive full income maintenance pensions until such time as they are able to return to gainful employment. We would point out that this can only work in conjunction with the positive approach to rehabilitation and placement specified earlier. But we do not feel that a seriously injured individual should receive only a 45% pension, as an example, if he is unable to obtain gainful employment. On the other hand, we do not see any reason why an individual who was able to return to gainful employment at an income level as high as or higher than he had prior to his accident should receive 45% of his prior income merely because he is now disabled to some extent. Therefore we suggest that individuals should receive full income maintenance pensions until such time as the Workmen's Compensation Board is able to

find suitable employment for the individual and that once that employment is found, the individual's income maintenance pension should be reduced so that the only amount he would be receiving under this heading would be the difference between his present earnings and his prior earnings."

It should be kept in mind that although both the 1973 and 1978 committees advocated income maintenance, the proposals were different in that instead of the lump-sum payment proposed by the 1978 committee as compensation for the actual injury, the 1973 committee proposed a monthly pension as compensation for the injury, as well as a pension to compensate for wage loss, if in fact there was such a loss. Essentially, however, there was no difference in principle between the income maintenance proposals of both committees. It will be noted that the 1973 committee contemplated that income maintenance would continue "**until such time as the Workmen's Compensation Board is able to find suitable employment for the individual**." That proposal, must, of course be read in conjunction with the same committee's warning that "this" (i.e. income maintenance) "can only work in conjunction with the positive approach to rehabilitation and placement specified earlier."

Return to Original Intent Needed

The 1979 legislation, which passed unanimously by the Legislature, in adopting the income maintenance approach, requiring the Board to "estimate the effect of the injury on the loss of earning capacity resulting from the injury, and to **ensure** compensation to the worker...." spelled out quite clearly the intentions of the Legislature. It was however, left to the Board to undertake the difficult task of determining how it should arrive at its estimate of loss of earning capacity. In leaving this task to the Board without spelling out how the estimate was to be arrived at, the Legislature no doubt had in mind that the circumstances of each case would vary so greatly that it would have to be left to the Board and its employees to estimate the loss on the basis of the peculiar facts and circumstances of each case and each individual.

When this question was raised for the 1982 committee, they attempted to limit the basis for deeming by commenting on the notion of a "suitable" occupation. The idea was that if a suitable occupation was narrowly defined then the deeming process would be fair and reasonable. Much of the testimony received by the present committee during the course of its hearings throws a great deal of doubt on this concept.

The review committee proposes to go back to the spirit of the 1973 and 1978 review committee reports. That is, to return to the principles enunciated in those reports...That the responsibility of the Board is to replace any income loss which occurs as a result of the injury. Only when it can be demonstrably justified that the income loss is not due to the injury can "deeming" be seen as a reasonable proxy for income loss. That is, when the worker has voluntarily withdrawn from the workforce, has found, or been offered another job or has successfully been retrained for another occupation, then and only then can deeming be seen to be legitimate.

Recommendations

The committee recommends that the principles on which the phrase "estimated to be capable of earning at a suitable occupation" are to be interpreted as follows and the committee further recommends that the Board implement this policy as soon as possible.

1 The general approach to deeming should be based on the recognition that it was originally designed to deal with exceptional circumstances. It was designed to provide a system of measuring income loss when the individual's income loss was clearly unrelated to the injury. Therefore the focus should be on the circumstances in which deeming is legitimate. Only four circumstances exist in which deeming is legitimate.

(a) The worker has refused an actual job offer within his or her physical limitations. In this case the basis for deeming is obvious – the salary of the job which the worker has refused.

(b) The worker has completed an appropriate rehabilitative training program. In this case the basis for deeming would be the average starting salary of the position for which he or she was trained.

(c) The worker has refused to take appropriate rehabilitation training. In this case, the basis for deeming would be the average starting salary of the position for which he or she would have been trained.

(d) The worker has voluntarily retired from the labour force – either through the acceptance of early retirement or through staying home for personal and financial reasons. This is the only situation where the exercise of some judgement is necessary for there may in fact not be an actual job which can be applied in deeming that individual.

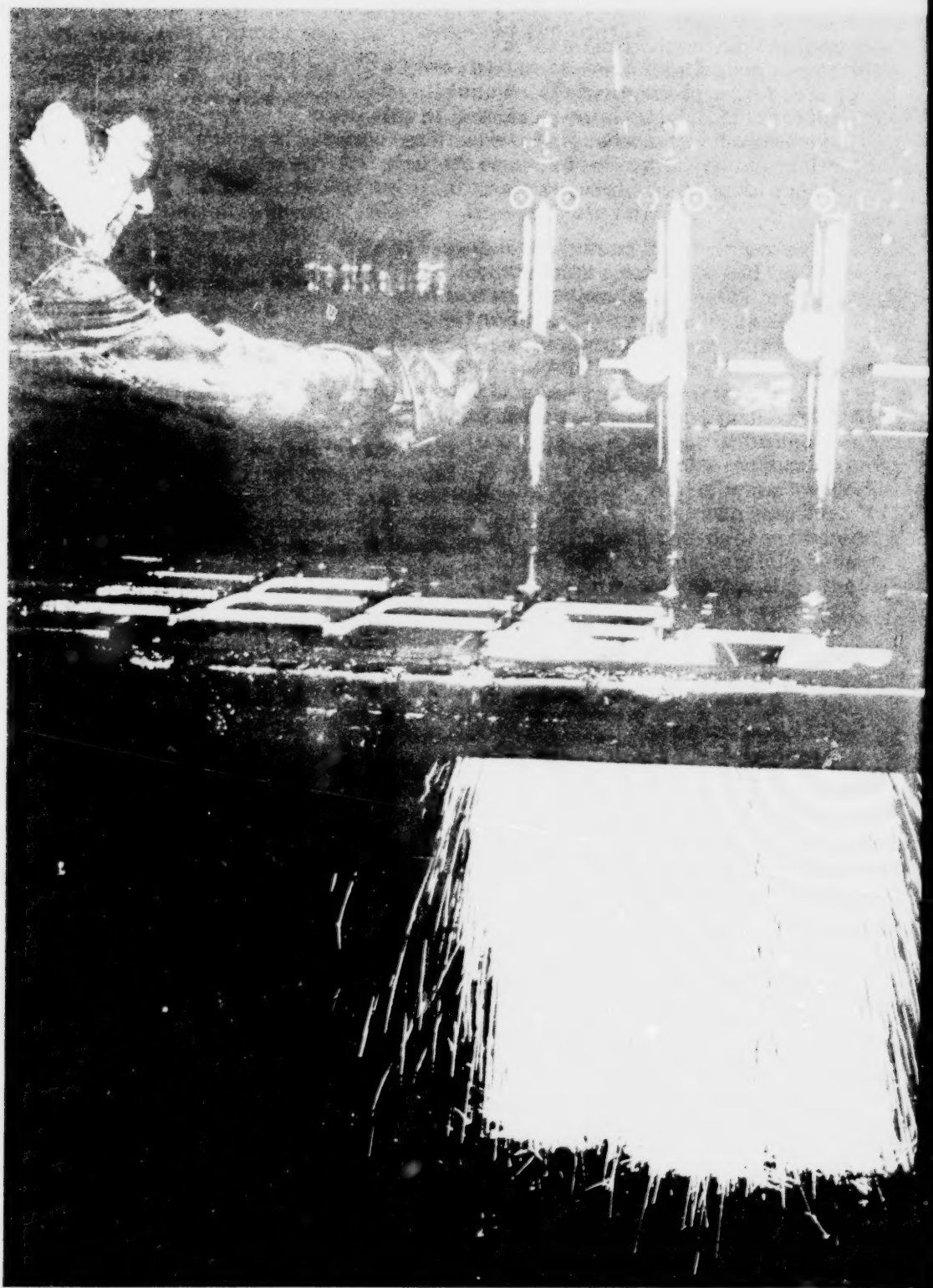
2 In applying the principles outlined in Recommendation 1, an appropriate rehabilitation program will be defined as follows.

(a) A course of less than one year would never be considered an acceptable program. If the training course is less than one year then the Board would be required to "find a job." This does not mean the Board could not provide short-term training courses. They would simply be required to be certain that the graduate of a short-term training program is employed as a result of that training.

(b) If the course is twelve to twenty-four months in duration then the individual would be allowed six months for job search before the deeming would occur.

(c) If the course is longer than twenty-four months then the individual would be allowed three months for job search before deeming would occur.

The committee believes that this places the responsibility of the Board back where it belongs. It is not the responsibility of the Board to guess what the worker's earnings would be if only that worker could get a job. It is the Board's responsibility to rehabilitate that worker and aid the worker to return to productive employment. Clearly this new interpretation is based on that goal.



Chapter

3 Benefits

Generally speaking, the attention of previous review committees has focused on legislated benefits. This review differs in that the committee, based on positive representations received during the course of the review, determined that fewer changes were called for with regard to this area. It is suggested that the indexation of a large number of compensation benefits coupled with a declining level of inflation over the past few years has led to decreased pressure for significant changes in benefits. There were, nevertheless, some issues on which the committee feels compelled to comment.

Surviving Spouses

Under the present system, a surviving spouse receives compensation for five years or until the youngest child is sixteen years of age or eighteen years of age if in full-time attendance at school. The amount of compensation paid to the spouse during this period of time is equal to what the worker would have received if he or she had lived but been totally disabled.

In addition to the payment of benefits, the spouse is entitled to receive counselling and vocational assistance from the Board, to help him or her to enter the labour force and become self-sufficient. Section 83(4) of the Act provides that compensation benefits may be extended beyond the initial period "where the board believes that an undue hardship as a result of the injury to the deceased worker would otherwise exist."

Comments concerning the five-year limit were made in briefs received by the committee. It also heard directly from surviving spouses who had been subjected to the Board's interpretation of Section 83(4) or what has come to be known as the "hardship clause". The experience of one of the spouses provides a particularly good illustration of the issue.

The woman received surviving spouse's benefits for a period of five years following the death of her husband due to a work-related disease. Her benefits were terminated at the end of this period. The termination was appealed by the Workers' Advocates. In the letter of appeal it was pointed out that the woman was totally dependent on her husband's income and medical reasons prevent her from entering the workforce. The advocate noted that the woman is suffering an undue hardship that would not exist were it not for her husband's work-related disease and subsequent death.

A letter from the Board denying her appeal stated in part:

> "Hardship is taken to mean the marginal ability of an individual to financially provide for the bare necessities needed to sustain life. Undue hardship would be a situation where these necessities cannot be provided for."

The current Board order establishes a minimum monthly income level of $853.57. This amount is to include income from all sources. A spouse in receipt of a lesser amount would be eligible for extended benefits.

In examining this issue, the committee reviewed the premise on which the present method of payment is based. That is, that following the worker's death the spouse should receive full compensation benefits but that, in view of the large numbers of two income families, these payments should be seen as a way of giving the spouse a new start in life, as opposed to continuing for life. In other words, the system should recognize the needs of surviving spouses in replacing lost income, but at the same time avoid the concept of a legacy.

The committee agrees with the present structure up to this point. That is, a limit based on a period of five years or the youngest child's age and participation in school is reasonable and should remain in place. What it does not agree with, is the Board's narrow interpretation of undue hardship and its use of a means test to determine continuing benefits. The committee believes that this is contrary to the intent of the Act as it relates to income maintenance. In its opinion, a more equitable system would see the spouse treated in the same way as an injured worker after the expiration of the initial period of entitlement.

Recommendation

3 Section 83(4) of the Act (surviving spouse – five year limit) should be amended based on the following premises to provide for more equitable treatment of surviving spouses. The spouse's income at the expiration of the initial period of benefits is to be compared to the entitlement the deceased spouse would have had had he or she been totally disabled (updated for inflation). Continuing benefits are to be based on the difference between the spouse's income at that time and the deceased spouse's entitlement. In keeping with the principle of wage loss replacement, the reference point used with regard to income is to be earned income only; it is not to include income from other sources, such as investment income or sale of assets.

While the committee recognizes that there may be some delay in making the proposed legislative changes, it is concerned about the effect this may have on spouses who are currently experiencing difficulty as a result of the Board's present policy with regard to the hardship clause.

Recommendation

4 The Workers' Compensation Board should immediately review its current interpretation of Section 83(4) with a view to implementing the principles contained in Recommendation 3.

The provision of an annuity to a surviving spouse at age 65 was also addressed by the committee in its discussion of more equitable treatment of the spouse. In order to fully extend to spouses the benefits available to injured workers, the committee agreed that the same provisions concerning an annuity as presently apply to injured workers must be implemented for surviving spouses. This annuity is to be based on the date of the fatality.

Recommendation

5 When benefits have been paid to a surviving spouse for a period exceeding 24 consecutive months from the date of the fatality, an amount equal to 10% of the payments that have been made and are being made should be set aside by the Board, to provide an annuity for the spouse at age 65.

As the committee has already noted, the Act does provide for rehabilitation assistance to be made available to the spouse of a fatality victim. Unfortunately, however, it would appear to the committee that in actual practice this is rarely done. Rehabilitation is a key component in a compensation system based on income maintenance. This point cannot be emphasized enough, especially in light of the recommendation which will bring surviving spouse's benefits in line with the principle of income replacement. It is essential that the spouse be contacted **personally** by a rehabilitation counsellor at the commencement of the initial period of benefit entitlement. The spouse must be made aware of the provisions of the Act including the right to counselling and vocational assistance. It is the responsibility of the counsellor to maintain contact with the spouse and make the appropriate rehabilitation services available when he or she is ready to take advantage of them.

Finally, before leaving this issue, the committee wishes to make one further comment. That is, that it recognizes that under certain circumstances following the expiration of the initial period of entitlement, the Board will have the right to deem a surviving spouse. The committee expects that this will be done in accordance with the principles outlined in Chapter 2.

Funeral Allowance

Another issue concerning benefits for fatality victims that was addressed by the committee relates to the level of funeral expenses. Representation made to the committee suggested that it be increased.

In its discussion, the committee noted that the Act does not provide for the automatic escalation of this level; rather, it is fixed by statute. In practice, the level has been adjusted based on the recommendations of previous review committees. The dilemma faced by the committee then, was one of reasonably predicting what level would be appropriate not only at the present time but also four years from now.

The committee acknowledges that the increase to the current level of $3,000 became effective less than a year ago and is of the opinion that this level is adequate for the short term. However, the committee also realizes that costs associated with a fatality will likely increase over the next four years, necessitating an increase in funeral expenses prior to the next review.

Recommendation

6 The death benefit should be increased to $3,500 effective January 1, 1989.

Maximum Wage Rate

As the result of an amendment to the Act effective September 1, 1985, the maximum wage rate was increased from $33,000 to $48,000. Prior to this, the rate had been increased using a formula based on an annual review of earnings of injured workers.

In recommending a significant increase in the maximum wage rate, the 1982 review committee was influenced by two factors. The first concerned the state of the economy and the high level of inflation and increasing wage rates. The second factor involved the conversion from gross to net income as the basis for determining compensation benefits.

In its study of the issue, the present review committee discussed the idea of providing a regular means of increasing the rate through some form of indexation; and considered concern expressed by employers over the size of the recent increase and the effect it might have on the assessable ceiling.

With regard to the latter, the committee feels that it is too early to determine the full impact of the recent increase on employers. It also noted the drastic change in economic conditions that have taken place since 1982 and suggest that indexing the maximum wage rate may not be the best way to address the matter. In fact, in view of the present and foreseeable economic climate in Saskatchewan, the committee is of the opinion that the present level of $48,000 is satisfactory; however, the committee does recognize that this situation could change before the next review.

Recommendation

7 The present maximum wage rate of $48,000 should be maintained. However, in the event that economic conditions in Saskatchewan change dramatically before the next review and wage levels increase to the point where the $48,000 ceiling is no longer appropriate, the Workers' Compensation Board should recommend to the Legislature an increase in the maximum wage rate that would be fair and reasonable.

Maintenance of Unemployment Insurance and Canada Pension Plan Contributions

During the course of the review it was brought to the committee's attention that while contributions for Unemployment Insurance and the Canada Pension Plan are being used by the Board for the purpose of determining a worker's net income, these amounts are not being paid into the plans on the worker's behalf. The committee is concerned that this situation is causing unreasonable hardship for some injured workers, because they have not been able to accumulate the required time credits to qualify for unemployment insurance or the continuity of payments to the Canada Pension Plan is disrupted. For example, if after being on compensation for a lengthy period of time, a worker returns to work and is shortly thereafter laid off, he or

she is denied unemployment insurance benefits because he or she has not been contributing to the system. In addition, pension credits are being lost by workers who are on compensation for prolonged periods of time.

Its concern led the committee to contact senior officials of the Unemployment Insurance Commission and the Canada Pension Plan to inquire whether the Workers' Compensation Board could submit contributions to these plans on behalf of injured workers. Responses to these inquiries indicate that present legislation does not allow this to be done. Implementation of such a proposal would necessitate major changes to federal legislation. In fact, the committee was informed that approval of two-thirds of the provinces having two-thirds of the Canadian population would be required to make the appropriate changes to the Canada Pension Plan.

Nevertheless, the committee firmly believes there is strong cause for the existing rules to be changed so that workers do not lose the protection against unemployment that they have been buying, or entitlement to retirement income, simply because they are injured.

Recommendation

8 The provincial government should take immediate action to discuss the amendment of the regulations governing Unemployment Insurance and the Canada Pension Plan with other jurisdictions, with a view to persuading its federal counterpart to make the necessary changes that would allow contributions for each program to be made by the Workers' Compensation Board on behalf of injured workers and their pre-accident employer.

Canada Disability Pension

Under the Canada Pension Plan, a worker, who through accident or disease, suffers a "severe and prolonged" disability which prevents him or her from pursuing any gainful employment is eligible to receive the Canada Disability Pension based on his or her contributions to the Canada Pension Plan. Similarly, survivors are eligible for benefits under the plan in the case of a fatality.

Section 99 of the Workers' Compensation Act states that beginning twelve months after the commencement of the loss of earning capacity, any benefits relative to the injury or death that the worker or dependent is entitled to receive under the Canada Pension Plan will be considered as wages by the Board for the purpose of calculating compensation benefits or determining the surviving spouse's entitlement. Representation made to the committee suggested that this section of the Act should be deleted.

The committee understands that in order to determine whether an injured worker is entitled to receive the disability pension, the Board encourages him or her to apply for it. If the application is accepted, compensation benefits received by a worker are reduced by the amount received under the Canada Pension Plan in the form of a disability pension.

The committee disagrees with the practice of deducting fatality benefits awarded to a surviving spouse under the Canada Pension Plan because it believes that benefits received by surviving spouses should not be subject to deduction. Further, the committee believes that no person should be compelled to apply for the Canada Disability Pension. Rather, individuals should be given a choice. The circumstances of each case vary to a great degree; the individual should be able to choose which option is in his or her best interest. The committee wishes to point out, however, that should the individual choose to receive benefits under the Canada Disability Pension, any such benefit related to a compensable injury should continue to be deducted from his or her compensation benefits.

Recommendation

9 Benefits received by survivors under the Canada Pension Plan should not be deducted from compensation benefits and injured workers should be allowed to choose whether or not they wish to apply for the Canada Disability Pension. In order to implement these principles,

Section 99(1) of the Workers' Compensation Act must be amended by: changing "periodic" to "disability"; deleting the words "death or"; changing the phrase "or dependant is then entitled to receive" to "is receiving"; and by deleting the phrase "or in determining the surviving spouse's entitlement".

Section 99(1) would therefore read as follows:

"99(1) On the expiration of 12 months from the date of commencement of the loss of earning capacity resulting from the injury, any disability benefits relative to the injury that a worker is receiving under the Canada Pension Plan or the Quebec Pension Plan, as amended from time to time, shall be considered as wages that the worker is capable of earning in calculating the compensation to be paid by the board for loss of earning capacity."

Independence Allowance

The second element of the wage loss compensation system established in 1979 was a lump sum payment made in recognition of potential costs associated with a permanent physical impairment caused by a work-related injury. In recommending this, the 1978 review committee acknowledged that although a person may return to work following an injury, he or she may incur expenditures which were not required before the injury. These might include extra transportation, special clothing, home maintenance and repair, mowing lawns, shovelling snow and a myriad of other tasks that a person with a severe physical impairment would find extremely difficult or expensive. The committee clearly did not intend that the lump sum payment be an award for pain and suffering.

A great deal of dissatisfaction was expressed to the 1982 review committee regarding both the level of the lump sum payment and its ability to properly address the concerns of persons who faced extra expenses as a result of their serious impairment. In its discussion of the issue, the 1982 committee noted that the lump sum payment is the only payment likely to be received by a person who suffers a lesser impairment but no wage loss as a result of a work-related injury. The committee suggested that it should be significantly increased at the low end; and, recommended that the maximum lump sum payment be equal to the Average Weekly Wage for the previous year and that the minimum lump sum should be $1,000. The 1982 committee further recommended that an independence allowance be awarded annually to workers with serious disabilities. This independence allowance was, in the committee's opinion, the best way to address the concerns of persons with serious physical impairments.

Effective September 1, 1985, the minimum and maximum lump sum payments for permanent functional impairment increased to $1,000 and $20,000 respectively. The amendment also provided that beginning January 1, 1986 these amounts were to be increased annually by the percentage increase in the Consumer Price Index, rounded off to the nearest $100. A provision concerning an independence allowance also became effective on this date. It allows the Board to annually award an independence allowance of up to 10% of the maximum lump sum to workers who have suffered a severe functional impairment that results in their being unemployable.

Presentations to the present committee indicate continued dissatisfaction despite the increased level of the lump sum payment and the introduction of an independence allowance. It appears that payments do not relate to need. Individuals who have returned to work but have ongoing expenses for tasks they are no longer able to do for themselves because of their injury are not eligible for the independence allowance because it applies only to those who are unemployable. This leaves them with the lump sum payment which, in their opinion, is inadequate to cover their expenses. Other individuals, contrary to the intent of the 1978 committee, view the lump sum payment as an award for pain and suffering and as such feel that it is too low. Some organizations argue that the lump sum award conflicts with the principle of replacement of wage loss and is not a productive use of available funds.

After examining the question of the lump sum payment and the independence allowance, the committee has concluded

that over the past eight years there has been a great deal of confusion and a move away from the true intent of the lump sum payment. The committee contends that both the independence allowance and the lump sum payment are designed to suit the same purpose. It is likely that a fully developed independence allowance would make irrelevant the need for a lump sum payment.

Recommendation

10 Section 67 of the Act should be amended to remove the provision pertaining to the indexation of the lump sum for permanent functional impairment and in conjunction Section 67.1 should be amended to remove the requirement that the independence allowance be available only to injured workers who are unemployable as a result of their injury.

This will allow the Board to provide to an injured worker an allowance of up to 10% of the maximum lump sum amount awarded (or up to $2,080) regardless of his or her employment status. The committee hastens to add that there must be a demonstrated need; it will be left to the Board to exercise its discretion and award an independence allowance only in those cases where there is additional financial cost associated with the disability.

This approach is more consistent with the basic principles of compensation established in 1979. Although the committee is not certain of the parameters of this approach, it believes it is necessary to expand the independence allowance as a first step in moving towards the original concept. That is, recognition that a physical impairment suffered as a result of a work injury may require an individual to make expenditures that would not normally have been made had they not been injured. Further review committees given adequate information should be better able to complete this cycle.

Recommendation

11 The Workers' Compensation Board should present a report to the next committee of review that provides an analysis of the level of need and the costs associated with a program that would provide injured workers with an allowance where they cannot undertake routine tasks. Some information such as the number of independence allowances awarded, their amount and the percentage of permanent functional impairment of each recipient will be available from Board files. However, it is unlikely that these statistics alone will be sufficient, in which case a survey should be undertaken in order to fully determine the level of need.

Pre-Existing Condition

The term "pre-existing condition" refers to the situation where an injury aggravates a pre-existing condition that, until the injury, did not interfere with the worker's ability to perform his or her job. On numerous occasions during the course of the hearings it was suggested to the committee that the Board appears reluctant to grant compensation in such situations.

The committee was surprised that this issue was raised so frequently, in that the legislation clearly provides that a pre-existing condition does not affect compensation. Section 50 of the Act states:

> "50 The board shall not reject the claim of a worker for compensation or reduce the amount of compensation payable to him by reason of a functional condition of the worker that exists at the time of the injury in respect of which compensation is claimed, where that condition did not result in any functional impairment to the worker and did not affect the ability of the worker in his employment."

In view of the above, the committee is of the opinion that this issue is already addressed in existing legislation and strongly suggests that the Board not overlook Section 50 when dealing with claims involving a pre-existing condition.

Interim Child Care and Domestic Support

It is the policy of the Board to cover child care expenses where the injured worker is confined to hospital because of the injury or is required to attend a treatment centre

to receive medical attention. Child care costs are also treated as a legitimate expense where the worker is engaged in education and training.

However, the committee believes that child care can involve additional expense where the injured worker is confined to home and is, because of the injury, unable to care for a child. In the case of an injured single parent, or where the spouse is an invalid, an additional expense may also be incurred with regard to domestic help.

In examining this issue, the committee realizes that consideration would have to be given to other factors such as whether child care is normally required on a full time basis or whether the other spouse is in a position to look after the child or children. The committee does not feel that the Workers' Compensation Board should be responsible for child care costs, for example, where a child is usually in a day care or where assistance is available from the other spouse.

Nevertheless, in the event that the injured worker incurs additional expense because of being injured and unable to take care of a child or in some circumstances domestic duties, the committee believes that these additional expenses should be covered by the Board until the worker has recovered sufficiently and is able to care for a child or perform domestic tasks without risk of re-injury in doing so. It should be noted that this coverage is intended to be an interim measure used prior to the Board's determination of an injured worker's permanent functional impairment, at which time he or she will become eligible for other allowances.

Recommendation

12 The Workers' Compensation Board should expand its practice of covering child care expenses and expenses related to domestic help to include the situation where an injured worker incurs additional expense that would not have existed but for the injury.

Payout in Lieu of an Annuity

Where compensation is paid for a period exceeding 24 months, Section 74 requires that the Board set aside an amount equal to 10% of the compensation being paid which, together with the accrued interest is to be used to provide an annuity for the worker at age 65. If the annuity is less than $500 per year, the worker is paid the accumulated capital and interest as a lump sum, in lieu of the annuity.

It was suggested to the committee that fluctuating interest rates influence the amount of money required to purchase a $500 annuity; and further, that brokers are not interested in transactions of this size. These difficulties would be alleviated to a great extent by increasing the amount necessary to purchase an annuity.

Recommendation

13 Section 74(3) of the Workers' Compensation Act should be amended to provide that where the total of the amount set aside as an annuity and accrued interest is $5,000 or less when the worker reaches age 65, the worker shall be paid this amount in a lump sum. If the total exceeds $5,000 an annuity must be purchased.

Legislative Conflict

Section 93 of the Act provides that: "In no case shall the total compensation paid to all dependents of a worker exceed the compensation which would have been payable to the worker had he been totally disabled."

It was pointed out to the committee that as a result of amendments which became effective September 1, 1985, the total benefits paid to surviving spouses and children exceed this ceiling. It was clearly not intended that benefits paid to survivors be limited by a ceiling and the committee agrees that the legislation should be amended accordingly.

Recommendation

14 Benefits paid to survivors should not be limited by a ceiling. Section 93 of the Workers' Compensation Act should therefore be repealed.

Allowance for a Foster Parent

During the course of the review it was brought to the attention of the committee that as a result of a drafting error when the September 1, 1985 amendments were written, the legislative provision enabling the Board to make an allowance to a foster parent was lost. The committee believes this provision should be reinstated.

Recommendation

15 To enable the Board to make an additional allowance to a foster parent, Section 86 of the Workers' Compensation Act should be amended by adding to it the following: "and in addition any sum that the Board may determine until the child attains age 18."

Chapter 4

Rehabilitation

Workers' Compensation is More Than a System of Monetary Compensation

Workers' compensation must not be seen simply as a system of monetary compensation for an injury sustained at work. It is in fact a much broader system that includes many different functions. Rehabilitation of the injured worker is perhaps the most important of these functions for no system of compensation for work-related injuries can be considered complete if it does not include an effective rehabilitation program. The committee expressed considerable concern about the practice of deeming in Chapter 2 and feels that in resolving the problems identified in the present deeming practices of the Board, rehabilitation will assume an even greater importance. Deeming will no longer be an alternative to rehabilitation.

The 1982 committee of review expressed disappointment and frustration over what it perceived to be a very slow reaction on the part of the Workers' Compensation Board to the concerns expressed in the 1978 report of the committee of review. In response the 1982 committee outlined a philosophy of rehabilitation and developed an approach for its implementation. Four more years have elapsed and we are no closer to what the committee considers an effective system of rehabilitation than we were a decade ago. The committee has some difficulty in understanding why the approach outlined in 1982 has not been given consideration by the Board. The committee reminds the Board that one of the principles of our system of compensation, as outlined in Chapter 1, is the obligation of the employer, through the Workers' Compensation Board, to "provide such rehabilitative or other measures as can practically be undertaken with a view to making it possible for the worker to return to his or her former employment or to equip the worker to engage in alternative suitable and available employment."

Rehabilitation can be separated into two distinct phases. The first is restoration of physical function, which includes medical treatment and physical therapy; while the second involves returning the worker to the workforce.

Physical Restoration

Timeliness of Treatment

Many of the comments put forward by injured workers and employers focused on rehabilitation; specifically, the need for a more timely and personal approach to rehabilitation. It is the committee's view that the importance of this issue cannot be overemphasized, for the success of any rehabilitation program is largely dependent not only on when the program commences but also on the relationship the injured worker has with his or her rehabilitation officer. Rehabilitation should begin as soon as possible following an injury. Where an injury is serious and there is no question that the injured worker will require rehabilitation, an officer should contact the worker as soon as medical conditions permit, but not later than 30 days following the injury. In the majority of cases the need for rehabilitation will not be evident from either the injury, or for many weeks following it. If an injured worker is receiving compensation twelve weeks following an injury he or she is automatically transferred to the rehabilitation department. In such cases the rehabilitation officer should contact the injured worker at the time the transfer is completed.

The rehabilitation officer is the injured worker's primary contact with the Board and the person on whom he or she must depend for information and assistance. Following an injury, particularly a serious one, an injured worker may experience a great deal of anxiety over having to be absent from work as well the uncertainty of his or her future. By establishing personal

contact, the injured worker will be fully informed of rehabilitation services and assured that these services will be available.

A further reason personal contact is important is that the rehabilitation officer can begin to look at the level and type of services the injured worker will need. This will promote planning the rehabilitation program and provide for early contact with others involved in the program. It should be stressed also that the rehabilitation officer's contact with the worker must be ongoing. This allows for continual assessment of the injured worker which is necessary for developing the rehabilitation plan. The committee heard from injured workers who, after being contacted by a rehabilitation officer following their injury, were virtually ignored for weeks or even months.

In the case of a fatality the surviving spouse should be contacted personally so that he or she can be informed as to the services that will be made available, particularly his or her right to rehabilitation services.

Recommendation

16 Where the Board knows an injury is serious enough to require rehabilitation, personal contact should be made within 30 days of the submission of the accident report. In other cases where the Board automatically refers injured workers to the rehabilitation department after 12 weeks of compensation, personal contact should be made at that time.

Rehabilitation Facilities

Rehabilitation facilities are an obvious, yet critical, element affecting timeliness of treatment. A major problem has been the lack of proper facilities to handle the increasing demands for rehabilitation services, which reduces the effectiveness of early intervention and increases the difficulty of developing a long term plan. Wascana Hospital is the primary treatment centre for workers' compensation claimants, but, it should be pointed out, it is not the only source of treatment. Some workers are treated at community facilities. The hospital's main function is to assess injuries and provide acute care physiotherapy. Approximately 400 — 500 claimants are admitted each year, however this is far below the 1,100 — 1,200 per year that the Board estimates should be admitted. The result is an unacceptably long waiting list of, on average, 2.59 years from time of injury to admittance to hospital.

The new Wascana Rehabilitation Centre will, upon completion, be able to treat up to 140 injured workers at a time, which is triple the capacity of Wascana Hospital. The new centre will be the cornerstone for rehabilitation services in Saskatchewan and will be of enormous benefit to injured workers because greater numbers will receive treatment much sooner than is currently the case and the waiting period should be reduced accordingly. With more timely physical restoration a worker should be able to return to work sooner.

Recommendation

17 The committee commends the Government of Saskatchewan for commencing construction on the new Wascana Rehabilitation Centre and recommends that the treatment of injured workers should continue to be a major function of the new facility

Need for Additional Services Immediately

Although the new centre will greatly increase the level and standard of service it will not be completed for two to three years. Injured workers who appeared before the committee expressed many concerns which must be addressed now. The central question the committee examined was how to best address the immediate need for facilities and delivery of service recognizing, first of all, the difficulty in quickly expanding programs and hiring staff; and secondly, that in two to three years time a major new facility will be available. The answer, the committee feels, must lie in providing interim services.

One approach would be to provide additional qualified staff for physiotherapy units in hospitals throughout the province. The additional staff could be placed in hospitals central to the greatest demand for physiotherapy services from injured workers, or where physiotherapy units are

underutilized. These therapists could be transferred to the new Wascana Rehabilitation Centre when it begins operation. In effect, recruitment and hiring for the centre could begin immediately, with those hired placed in existing facilities until the new centre opens. It must be stressed that this is a short term solution; however, it is one which could relieve some of the backlog of injured workers waiting for treatment. Where shortage of equipment is a problem the purchase of equipment for the Wascana Centre could be advanced, where feasible, to be utilized now but then transferred to the new facility.

Another aspect of this issue is one raised by employers. They have asked why, in light of the waiting period for treatment and its impact not only on costs but on the well being of the individual, unused facilities such as schools cannot be pressed into temporary service as treatment units. Some equipment, which will be required for the new centre, could be purchased now for use in such facilities then moved to the new centre. The committee realizes that this would not be a simple task, however it believes it is a concept that should be considered. Whatever can be done to ensure that injured workers receive prompt treatment must not be overlooked.

Recommendations

18 The Department of Health and the Wascana Rehabilitation Centre Board should proceed as quickly as possible to hire physiotherapists and occupational therapists to staff physiotherapy units at hospitals where such facilities may be currently underutilized.

19 The Department of Health, Wascana Rehabilitation Centre Board and the Workers' Compensation Board should explore the possibility of establishing temporary treatment centres and, where possible, advance the purchase of equipment needed for the new rehabilitation centre for use in these temporary treatment centres.

Outreach Program

While the new Wascana Rehabilitation Centre will be the primary treatment facility it may not always be necessary to send an injured worker to the centre. A number of workers who appeared before the committee had sustained injuries which, although requiring therapy, did not require extensive therapy. Many workers felt, as did their doctors, that if they could receive therapy closer to home money would be saved, but more importantly they would receive prompt treatment while remaining in familiar surroundings. The committee agrees with this viewpoint and proposes that outreach facilities be developed to provide basic therapy services in local communities. This would enable additional space at Wascana to be available for more serious cases. The committee sees such a system as complementing the provincial hospital rather than as a duplication of service.

Recommendation

20 To provide broader treatment for injured workers, particularly those who do not need acute care treatment, the Workers' Compensation Board should develop an outreach program with the objective of providing lower level treatment to injured workers closer to their own communities.

Shortage of Professional Staff

Saskatchewan's shortage of both occupational therapists and physiotherapists is a concern shared by government, hospitals and professional associations, and is an issue of particular importance to the committee. While the shortage of occupational therapists is more acute than it is for physiotherapists, the provincial demand for both is very high. In addition, the uneven distribution of these professionals throughout the province is also a major concern.

Over 70 percent of approved physiotherapy positions are located in Regina and Saskatoon with the remaining 30 per cent located primarily in the smaller cities. The vacancy rates in Regina and Saskatoon are 12 per cent and 7 per cent respectively. In the rest of the province the rates vary from 17 per cent to 51 per cent.

The greatest difficulty, therefore, lies in the smaller centres where there is little incentive to locate, and some vacancies remain unfilled for considerable periods of time. Increasing recruitment of occupational therapists and physiotherapists would seem to be the simple solution. However, a world wide shortage exists for both professionals making recruitment both time consuming and difficult. Saskatchewan is often at a disadvantage in competing with other provinces, particularly the more populated ones, for these highly trained medical professionals.

The answer would seem to be to increase training in the province and to encourage graduates from the two programs to locate in some of the smaller Saskatchewan centres. A four year physiotherapy program is offered at the University of Saskatchewan. The intake of students is currently 20 per year but as suggested in a recent study, this could be raised to 25 per year with no changes to the existing program. An increase of five students per year would help alleviate the shortage, particularly if they could be placed in smaller centres. Over the longer term this is unlikely to be sufficient and the program will have to be further expanded. An expansion of 10 to 20 students would require a complete restructuring of the program, however, which would entail considerable cost.

Saskatchewan does not have a school of occupational therapy and must rely on schools in Manitoba and Alberta to train Saskatchewan students. The problem with training students out of province is twofold. The number of Saskatchewan students who can receive training is limited and once they have graduated it is sometimes difficult to persuade them to return to Saskatchewan to practice. A feasibility study has been undertaken with regard to establishing a school of occupational therapy in Saskatchewan. The committee feels that steps should be taken to establish a school as soon as possible.

Recommendations

21 The government should move immediately to increase the intake of students at the school of physiotherapy by five and move as quickly as possible to restructure the program to accomodate a further ten students per year.

22 A school of occupational therapy should be established in Saskatchewan to help alleviate the shortage of therapists as well as provide increased opportunities for students to pursue careers in this occupation.

In-Service Training

The treatment injured workers receive from medical staff or Board staff is extremely important. Attitude, on the part of those who are providing treatment, is very important to patients as they deal with their injuries and potential disabilities. The committee feels that institutions should have available in-service training programs that focus on the treatment of injured people. When staff are constantly faced with social, medical and psychological problems a tendency exists for them to develop a thick skin, and while the individual is conscientious, fair and well-intentioned this is not always evident to the patient. Such a training program would benefit both staff and patients.

Recommendation

23 Appropriate training programs should be developed to assist those involved in providing rehabilitation treatment to understand and deal with injured workers. Such training programs should be included in the program of the new Wascana Rehabilitation Centre.

Return to Employment

As has been emphasized in previous reviews the objective of rehabilitation is returning the injured worker to work. The committee wishes to stress again that along with providing adequate compensation to the injured worker it is the responsibility of the Board to assist the worker with finding employment. Recommendations on deeming make it most important that the Board give priority to this objective.

Arbitrary Dismissal

Most workers after injury return to their previous employment. This is true of serious injuries as well as minor ones. Most employers, as well, make every effort to allow that worker to return. However, the committee is concerned that in some situations injured workers are terminated while still on compensation. This practice should be stopped. However, the committee recognizes the difficulty of legislating such a policy. Injuries of long duration require that the employer replace the injured worker. Many jobs, particularly in construction, are of short duration and the worker would not have continued to be employed had there been no injury. Many employers do not have the flexibility to adapt an employment situation to meet the needs of a worker with a permanent impairment. In many cases, such as bankruptcy or large scale layoff, there is coincidental unemployment. Sometimes the rights of an injured worker would come in conflict with the rights of a more senior employee. Yet despite all these concerns the committee feels it essential that the government take some positive steps to eliminate the injustices that arise when an injured worker's employment is terminated even though the worker, once recovered, would have been capable of returning to his or her previous employment.

Recommendation

24 The Department of Labour should provide legislative protection for injured workers against unjust dismissals which occur solely as a result of a worker suffering a work-related injury.

In making this recommendation the committee realizes that it is not providing to the injured worker a guarantee of employment. It is, rather, providing protection against unjust dismissals.

Training

The importance of returning an injured worker to work cannot be overemphasized. Unless an injured worker returns to his or her former job with no diminished capacity, some type of training or retraining will be required. Training must not be seen as subordinate to other aspects of rehabilitation. Even when an injured worker returns to the same job he or she may not be able to perform their work in quite the same way and thus may require retraining. Injured workers returning to different work may need training to develop new skills, or retraining to expand the skills they already possess. An injured worker will have little or no chance of successfully returning to work, either in a new job or to a previous job, if he or she does not receive the training or retraining necessary to perform the work. Whether or not an injured worker requires retraining to broaden existing skills or training to develop new skills the training must focus not only on the skills and aptitude of the individual but on specific jobs or occupations. The range of possible training programs is considerable, including; academic courses at university, technical and trades training at technical schools, community college courses as well as training on the job.

An effective training program can only be achieved when objectives are clearly established and take into consideration the needs, capabilities and goals of the individual, his or her skills and aptitude and the demands of the labour market. An individual who is not actively involved in setting the course of his or her own future will have little incentive to be successful at a program into which he or she has had little input.

Recommendations

25 The Board should focus on training and retraining programs for injured workers as a priority for rehabilitation; and training programs approved by the Board must have the objective of providing a suitable occupation for the worker.

26 An injured worker should be actively involved in developing a training program and selecting appropriate courses for that program. The success of the program will depend upon the extent to which he or she is committed to it. That committment cannot be secured without the active involvement of the worker.

Need For a Career Counsellor

The process of developing a training program will involve primarily the worker and the rehabilitation officer. It will also involve other individuals with expertise in certain areas. Even when an individual's aptitude and employment objectives can be established other factors must be considered. First of all it is essential that any decisions made regarding training are done so in the context of the current labour market. Training for work for which no jobs are available or for which there is no reasonable expectation of employment is a waste of time and money. Expert knowledge of the labour market should be available. Secondly, knowledge of educational requirements for entry to academic courses as well as knowledge of the courses themselves, including timing, duration, etc. is critical. The committee heard from one worker who had been advised that with one year of university instruction he could teach industrial arts. He found out after he completed the year that he in fact required three years and thus faced two more years of school. The additional two years represented a cost he had not anticipated. This case is a good example. Having made the decision to return to school for a teaching certificate, the probability of finding a job in such a position should have first been determined, secondly the course work laid out, and finally the individual should have received full compensation for the period of training, as well as having books and tuition covered. A career counsellor could have assisted this individual by providing information about employment opportunities and also the course(s) of study required to meet his employment objectives. The career counsellor, in the committee's view, is an important part of the rehabilitation process.

Recommendation

27 The Workers' Compensation Board should hire a career counsellor to assist the rehabilitation officer and the injured worker in reviewing employment opportunities, setting employment objectives and selecting appropriate training programs.

Job Placement

Returning an injured worker to work has been emphasized throughout this chapter and the committee now turns its attention to the critical issue of job placement. Industries today are much more complex, both in organization and in use of technology, than they were as little as ten years ago. Returning injured workers to work in certain industries requires fairly detailed knowledge of these industries. The caseloads of claims and rehabilitation officers are established alphabetically by the last name of the claimant. Individual claims and rehabilitation officers therefore are responsible for injured workers from a wide range of occupations and industries. The committee feels that as a result the officers are not able to develop a detailed knowledge of the industries with which they are involved because of the large number of industries. One solution to ensuring that both claims and rehabilitation officers develop the necessary familiarity with industries is to organize their activities by industry. The committee realizes this would not be practical in all cases because there may be too few claims relating to a specific industry to warrant the exclusive attention of one claims or rehabilitation officer. However, where possible, assigning claims and rehabilitation officers on an industry basis would make it possible for the officer to develop a better knowledge of a particular industry and in doing so be in a better position to help both the injured worker and the employer.

Recommendation

28 Claims and rehabilitation officers should be assigned claimants on the basis of specific industry groups where practical.

Experience has shown us that even when the economy is buoyant it is difficult enough to return an injured worker to the workforce. With the level of unemployment we have today this task is made that much more difficult. The problem is often cited to be simply a lack of available jobs. While the total number of available jobs may be down there are still a number of employment opportunities. The committee is aware that the majority of jobs are filled through an informal recruiting network based on currently employed employees and their

employers. The problem is one of how to access these jobs. Individuals often have problems securing employment because they do not know the skills required for various jobs and may spend too much of their time looking for jobs for which they do not have the appropriate skills. The committee believes employers would be invaluable in assisting with job placement. They, along with injured workers, other employees, unions and job placement professionals including rehabilitation officers and a career counsellor could constitute a committee to assist injured workers not only in developing suitable training programs but also in helping them find employment. It would be neither practical nor feasible to establish an extensive system of committees without knowing precisely how such a system should be organized or how successful it would be. It would be feasible, however, to begin by establishing a pilot project.

Recommendation

29 In order to facilitate placement of injured workers as well as provide expert advice with regard to training, a joint committee composed of employers, employees, unions as well as a career counsellor and rehabilitation officers, should be established in a suitable industry as a pilot project. This project would have a time limit during which it would be monitored and evaluated by the Workers' Compensation Board to determine its effectiveness. If successful, such committees could be established, where practical, in other industries.

Cost Considerations

A sound job placement strategy is, by itself, not enough to ensure an injured worker's successful return to work. The costs of rehabilitation are shared on an industry basis. It is difficult therefore for a single employer to appreciate the cost savings to compensation as a whole that result from returning an employee to the workforce. The committee feels that a number of initiatives can be taken with this regard.

The first is that the Workers' Compensation Board has job placement programs including training on the job as well as work assessment. These are directed more at the employer who hires an injured worker who has not worked for the company before. The committee feels that no distinction should be made between an employer who has a worker returning to work but who needs retraining or an employer who hires an injured worker and provides training. Both should have equal access to all programs and the subsidies should be the same.

Recommendation

30 The Workers' Compensation Board should make no distinction in approving training programs and granting subsidies between an employer who has an injured worker returning to work or an employer who hires an injured worker.

The second change is that all costs related to training on the job and work assessment should be charged to the industry group rather than the individual employer. The current situation is that while an employer may receive a subsidy for training on the job they are in turn charged directly for it. By assigning rehabilitation costs to the industry group rather than the individual employer, the employer most active in hiring injured workers will receive a direct benefit and thus will be encouraged to continue with this practice. Care must be taken to ensure that this is not abused and that workers are not taken back to work prematurely. This can be avoided by the Board approving all training programs.

Recommendation

31 All rehabilitation costs should be charged to the industry group rather than the individual employer. No subsidy should be approved unless the training program is approved by the Board.

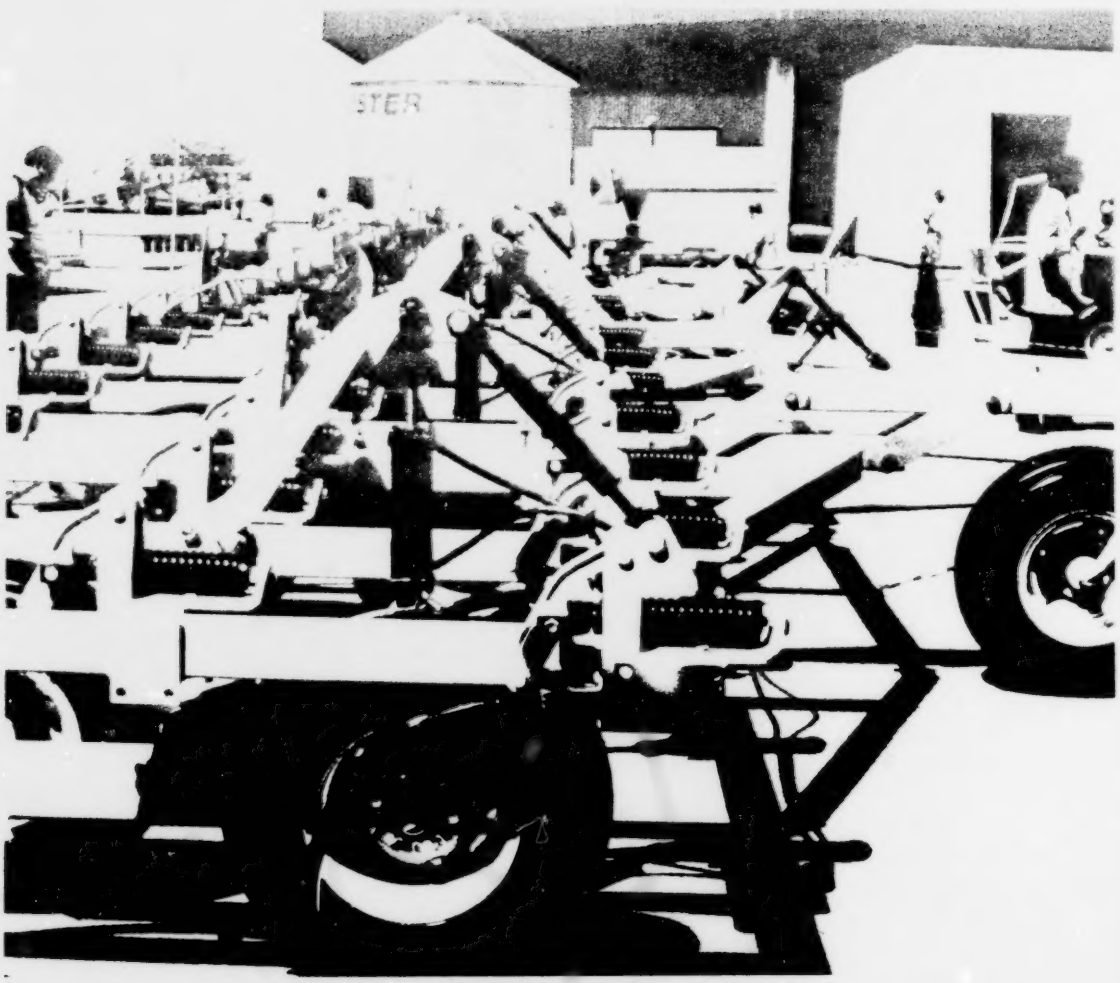
A further incentive to employers would involve broadening the definition of the Second Injury Fund to include pre-existing conditions. Employers would then be protected from many of the financial risks involved in hiring workers who have experienced injuries.

Recommendation

32 The definition of the Second Injury Fund should be broadened to include pre-existing conditions to protect employers who hire workers who have suffered disabling injuries.

Extending training subsidies to all employers who hire injured workers, pooling rehabilitation costs by industry and broadening the definition of the Second Injury Fund will help to remove many of the barriers to hiring injured workers.

In concluding this chapter, the committee wishes, once again, to state its belief that rehabilitation must be seen as the critical element of workers' compensation and furthermore, that job placement be seen as the critical component of rehabilitation.



Chapter

5 Accident Prevention

A review of the workers' compensation system would not be complete without examining the subject of accident prevention. Accident prevention can play a key role in compensation by minimizing the incidence of accidents.

Numerous times during the course of the hearings, the committee received comments concerning occupational health and safety and the role of both the Occupational Health and Safety Branch and the Workers' Compensation Board in accident prevention. Strictly speaking the committee's mandate does not extend directly to the Occupational Health and Safety Branch. In practice, however, the Branch is an integral part of the accident prevention system and as such must be considered in a review of this matter. In fact, it could be argued that the more effectively the Branch carries out its work, the less the demands placed on the Workers' Compensation Board.

Based on comments received through the review process, the committee has identified what it believes to be gaps in service that have the potential to adversely affect accident prevention, and have accordingly made recommendations aimed at improving these areas of shortcoming. The recommendations made are not meant simply to add to the workload of the Occupational Health and Safety Branch or dictate how funds should be spent. Rather, it is the expectation of the committee that the Branch will review their priorities in an effort to optimize their funds, with a view to its recommendations.

Recommendation

33 The Occupational Health and Safety Branch should undertake an evaluation of its programs and staff complement and re-assess its priorities in light of available and potential resources.

Relationship Between The Workers' Compensation Board and The Occupational Health and Safety Branch

Exchange of Information

In examining gaps in service the committee focused on three areas. The first involves the relationship between the Workers' Compensation Board and the Occupational Health and Safety Branch. While the Board is concerned with the administration of the workers' compensation legislation, it must also have a vital interest in promoting occupational health and safety. Safer and healthier workplaces in Saskatchewan is a common goal shared by the two agencies. Obviously, an effective working relationship between the Board and the Branch is essential to the achievement of this goal.

Comments received by the committee during the course of the review indicate that there is room for improvement in the relationship between the two agencies. On more than one occasion it was suggested that there is a great need for better co-ordination and exchange of information between the Board and the Branch.

One area where this is particularly evident concerns the identification of employers with poor safety records. Where the Workers' Compensation Board becomes aware of unsafe acts or practices, the Occupational Health and Safety Branch should be notified immediately. The Branch

should then undertake to investigate the situation and in co-operation with employers, workers and unions provide whatever assistance is necessary to remedy the problem.

For example, the committee was advised during its hearings of one accident on a construction site where trenching regulations were ignored. This should have resulted in a visit from an occupational health and safety inspector. In another instance, the committee heard of an unguarded meat saw in a butcher shop that did not, of itself, directly cause an accident but was a violation of a proper accident prevention practice. This also should have generated a response from the Occupational Health and Safety Branch.

Recommendation

34 The Workers' Compensation Board personnel should provide the Occupational Health and Safety Branch with information obtained from accident reports which by the nature of the accident, indicate a failure to follow accident prevention practices or possible contravention of the Occupational Health and Safety Act and Regulations. The incident should be investigated immediately by an occupational health and safety inspector and a report on the investigation should be referred back to the Workers' Compensation Board to be included in the injured worker's file.

In addition to the flow of information outlined above, the committee believes that the Occupational Health and Safety Branch should be utilizing statistics available from the Worker's Compensation Board to identify "hot spots" as to injuries and accidents, by industry and employer. The Branch should respond to these "hot spots" by investigating the problem and working with employees, unions and employers to determine the means by which the problem can be remedied. This may necessitate the development of an accident prevention program involving education, training, modification of equipment and modification of workplaces including the application of ergonomics. If the situation is found to be serious enough, the inspector could use his authority to issue notices of contravention or if necessary, close part or all of the offending establishment until corrective measures have been taken.

Recommendations

35 Statistics from the Workers' Compensation Board should be constantly monitored by the Occupational Health and Safety Branch in order to identify those employers or industries having an unusual run of accidents in a short term of time or a higher than normal incidence of accidents over a longer period. The Branch should initiate action immediately to prevent further accidents or injuries.

36 The Occupational Health and Safety Branch should utilize statistics from the Workers' Compensation Board to identify on an annual basis those employers or industries which have a higher percentage payout to assessment ratio compared to the average for the industry and undertake an appropriate response aimed at improving their safety record.

The committee anticipates that the implementation of the above recommendations will enable the Board to better meet the needs of the Occupational Health and Safety Branch; and in turn, allow the Branch to better serve the needs of the Board and the employers and workers of this province.

Funding Arrangement

Another area requiring the development of a closer relationship than presently exists relates to the funding arrangement between the Workers' Compensation Board and the Occupational Health and Safety Branch. The current arrangement is unique to government and drew comment from both employer and employee organizations during the course of this review.

The funding of the Occupational Health and Safety Branch is derived entirely from the Workers' Compensation Board. Traditional practice dictates that all monies generated by and allocated to all departments and agencies flow into and out of the

consolidated fund of the province. Funds cannot be transferred from one agency directly to another. As a result, priorities for the Branch are determined largely by the Department of Finance rather than the Workers' Compensation Board.

The impact of this arrangement is felt to the greatest extent in the area of research. Lack of expertise limits the Workers' Compensation Board in the type of research it can undertake on its own. This, plus the lack of control over the allocation of the funds it provides to the Branch, restricts the Board in its ability to initiate research in areas it sees as essential to accident prevention. The only avenue for conducting research presently open to the Board is through grants made to safety associations established by employers. This may be practical in some cases. On the other hand, there exists within the Occupational Health and Safety Branch a pool of expertise which may be best equipped to conduct the research required by the Board. There should be some means by which the Board can tap such expertise when necessary.

Recommendation

37 A mechanism should be established to allow the Workers' Compensation Board under certain circumstances to provide extra funding to the Occupational Health and Safety Branch for special projects.

Since the entire cost of the operation of the Occupational Health and Safety Branch is funded by the Workers' Compensation Board, all the activities of the Branch should be concentrated on accident prevention and the promotion of occupational health and safety. In the establishment of objectives and priorities and in the development of programs, the Branch must be responsive to the needs of the Workers' Compensation Board.

Improved Support for Occupational Health and Safety Committees

A second aspect of accident prevention addressed by the review committee concerns occupational health and safety committees.

Saskatchewan's Occupational Health and Safety Act requires the establishment of joint management and labour safety committees at all workplaces employing more than ten workers. In this way, primary responsibility for ensuring safe working conditions is placed on workers and managers at individual workplaces. Duties of the committees include: participation in the identification and control of health and safety hazards in the workplace; the establishment of health and safety programs to educate and inform workers; receiving, considering and acting on matters respecting the health and safety of workers; and the maintenance of records.

The review committee is keenly aware of the significance of these joint occupational health and safety committees. They are central to the province's occupational health and safety program. Improved support for these committees is essential if they are to achieve their goal of ensuring workplace health and safety.

The committee identified certain areas as needing support from the Occupational Health and Safety Branch. To begin with, prior to 1983 the Branch offered educational seminars to members of occupational health and safety committees on a regular basis. The success of these courses is apparent from the comments the review committee received during the course of its hearings. More than a few workers spoke highly of the seminars and expressed disappointment over their discontinuation. The provision of education to committee members is highly beneficial; the program should be restored by the Branch.

Secondly, there is a need for occupational health and safety committees to be aware of potential hazards associated with the introduction of new products and new technology into the workplace and to receive training with regard to the necessary safety precautions.

Thirdly, the ability of these committees to conduct research into issues they consider important to workplace health and safety is limited by a lack of organization, expertise and funding. The committees should be able to rely on the Branch to assist them in carrying out a research project.

Finally, enforcement of legislation provides considerable support to occupational health and safety committees.

Recommendations

38 The Occupational Health and Safety Branch should continue with the policy previously in effect of providing education for members of local occupational health and safety committees. The co-chairpersons of committees should be further educated as to the role and duties of committees.

39 Where it is necessary to develop specialized training concerning hazards which are specific to a particular industry or an individual workplace the Occupational Health and Safety Branch should assist committees by either providing or co-ordinating the provision of such training.

40 The Occupational Health and Safety Branch should provide more support to occupational health committees by way of research into areas identified by the committees. If necessary, extra funding for research on defined projects should be secured by the Branch from the Workers' Compensation Board.

41 The Occupational Health and Safety Branch should vigorously enforce existing legislation, including the posting of the Act and copies of notices, bulletins and inspection reports; and ensuring that committees are established in workplaces where there are more than ten employees and that a copy of minutes of committee meetings are being forwarded to the Branch. In every workplace the phone numbers of the Occupational Health and Safety Branch and its inspectors should be readily available to the co-chairpersons; these numbers should also be posted.

42 To facilitate the effective functioning of occupational health and safety committees, the Branch should re-emphasize and enforce the equality of co-chairpersons to prohibit unreasonable unilateral action by either co-chairperson.

Operation of the Occupational Health and Safety Branch

Inspections

Finally, the committee addressed the subject of accident prevention in terms of the overall operation of the Occupational Health and Safety Branch.

Responsibility for inspecting conditions of the workplace rests with the Occupational Health and Safety Branch. The committee understands that it is a general policy of the Branch to conduct inspections unannounced whenever possible. There may be occasions where this is not practical. For example, if a specific activity is being inspected, or if the inspector wishes to see certain people, it may be necessary to make appropriate arrangements ahead of time. Also, there may be difficulties related to transportation into remote areas. Nevertheless, the committee supports the continuation of this policy as a means of enhancing the effectiveness of inspections. Similarly, it would urge the Branch to continue the practice of issuing a notice where a contravention is discovered during the course of an inspection; and, in the case of neglect or refusal by the employer to comply with the notice, to institute the appropriate legal proceedings.

One aspect which the committee feels could be improved upon concerns the frequency of inspections. The committee is aware that presently, frequency varies according to industry, with large and medium industrial sites, construction sites and mines being visited most frequently. The committee's concern is that this method may result in smaller or lower risk industries, or industries other than mining and forestry located in northern Saskatchewan, being overlooked. It is their opinion that frequency of inspections should be increased, requiring reassignment or addition of inspectors if practicable.

Recommendation

43 Every establishment in the province with more than ten employees should be visited by an official of the Occupational Health and Safety Branch at least every two years.

Education and Training

While the committee recognizes the important role of the Branch in regulating and inspecting conditions of the workplace, this only goes so far towards decreasing accidents.

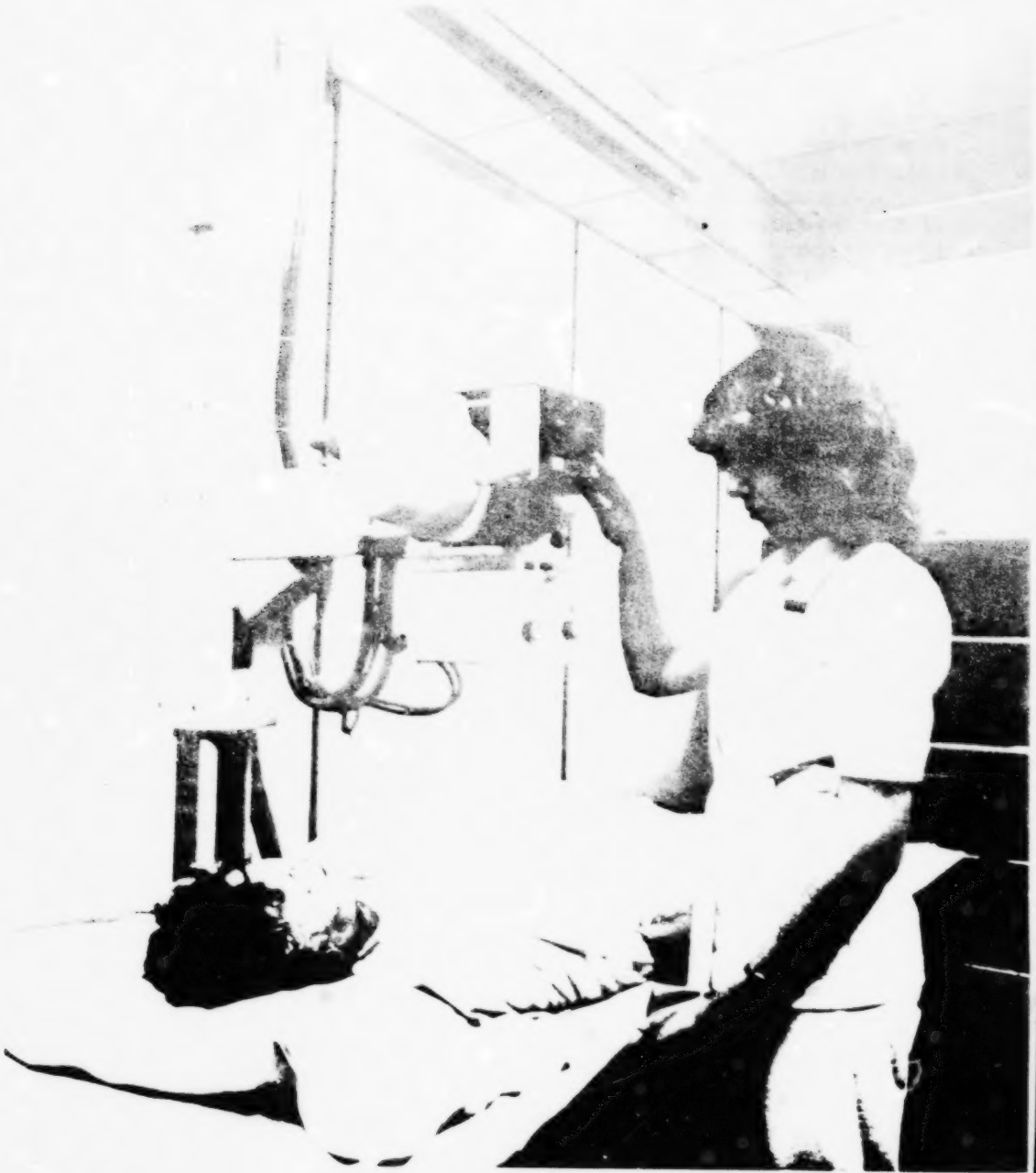
An equally or perhaps more important element is increased awareness of sound accident prevention practices through education and training. The committee believes that this approach has the potential to have a positive impact on the incidence of accidents and injuries and is concerned that it is an area that has not received as much attention as it should from the Occupational Health and Safety Branch.

The problem is that the large companies maintain safety units or have the resources to hire professionals to instruct their employees in accident prevention. The small companies, on the other hand do not have these units and lack resources such as time, facilities and expertise to carry out such programs.

Recommendation

44 The Occupational Health and Safety Branch should develop a basic course in accident prevention which will be made available to employers and employees across the province — especially smaller companies which do not have ready access to this type of training. The presentation would be made by Occupational Health and Safety personnel.

In concluding this chapter, the committee would like to emphasize that more attention to accident prevention should result in a reduced number of accidents and less paid out in the form of workers' compensation benefits. This attention should come from all parties involved; from the Workers' Compensation Board; from employers and workers through the occupational health and safety committees and from the Occupational Health and Safety Branch through vigorous enforcement of legislation, education, and support for the health and safety committees.



Chapter

6 Medical Aspects of Compensation

In their adjudication of claims, the Board must depend to a large extent on medical information. From time to time questions arise regarding the medical information itself or a decision reached by the Board based on that information.

This chapter examines the effectiveness of both medical boards and medical review panels — two mechanisms available to the Board to help settle medical questions. A third issue discussed concerns the role of nurses in the commencement of a claim for compensation.

Medical Boards

A worker who claims compensation or is already receiving it may be required by the Workers' Compensation Board to be examined by a medical board. These boards are convened for a variety of reasons. One example is where there are conflicting medical opinions regarding the nature and extent of a worker's injuries and his or her fitness for employment. The doctors who comprise the boards have expertise in the medical question at hand and function independently of the Workers' Compensation Board. One of the major problems identified by the committee is the perception on the part of injured workers that the medical board doctors work for the compensation board. It would not be an exaggeration to say that many injured workers view these doctors as paid agents of the Board. Obviously such criticisms even though they are inaccurate are damaging to the reputations of both the medical boards and the Workers' Compensation Board.

A great deal of dissatisfaction with medical boards was expressed during the review, which has prompted the committee to examine the effectiveness of these boards. Generally speaking, workers were critical of the attitudes of medical board doctors, the manner in which examinations were handled and a perceived reluctance on the part of doctors to give an opinion which would contradict that given by another doctor. Workers were also critical of certain practices of the Board itself. For example, it was suggested by some that the manner in which questions were asked of the medical board by the compensation board could be construed as being biased against the claimant. In some cases, the claimant was not advised properly of the reasons surrounding the medical board's examination. Since medical boards are only convened in Regina, a number of workers were obliged to travel long distances, often at tremendous discomfort, for what would amount to a fifteen minute examination. This only caused the claimant further frustration and distress. Finally, it was frequently felt that not enough consideration was given to the case by the Board before it was referred to a medical board.

This concern raises a question in the minds of the committee members. That is, why are the medical boards convened so frequently when the Board has its own doctors on staff. In fact, according to the Board's Annual Report, during 1985 their medical department was strengthened by the addition of an orthopedic surgeon. Inasmuch as the medical boards are seen to be weighted in favour of the Workers' Compensation Board, it would seem that a possible solution to this problem would be to limit the use of these boards. It is the feeling of the committee that since the Workers' Compensation Board employs physicians for their medical expertise, these people should be used to the fullest extent possible. In cases where Board doctors feel they lack sufficient knowledge, expertise outside the Board could be sought by contacting an appropriate specialist for his or her opinion. If, after doing this, the issue remains unresolved then, and only then, would it be necessary to require an injured worker to be examined by a medical board.

Recommendation

45 The Workers' Compensation Board should limit the use of the medical boards and more fully utilize its own medical staff. A conscientious effort must be made by Board doctors to secure an outside specialist's opinion on a medical question where necessary.

Wherever it is necessary for an injured worker to be examined by Board doctors, or doctors appointed by the Board, the following rules should apply:

1. **In cases where a claimant is referred to a medical board, he or she must be advised in writing as to the reasons for the examination;**
2. **On request, the claimant should be able to have someone in attendance during the examination. This of course would require some discussion between the Workers' Compensation Board, the claimant and the doctor(s) involved; and**
3. **When the Board refers workers to external medical consultants it should not prejudice the examination by suggesting a diagnosis. Information sent to an external medical consultant should be limited to:**
   - **(i) type of injury;**
   - **(ii) current disability and restrictions;**
   - **(iii) type of employment; and**
   - **(iv) questions posed concerning the present status of disability, work restriction and limitations, and the overall relationship between the injury and total body function which may be of a psychological nature.**

Medical Review Panel

A worker, or in the case of a deceased worker, a worker's dependent, who disputes the degree of functional impairment or limitation in working capacity set by the Board or the period of compensation allowed by the Board; or, who believes the Board's decision was based on an erroneous or incomplete physician's report, may request an examination by a medical review panel. A panel consists of a chairman appointed by the Board in consultation with the Saskatchewan Medical Association and two specialists selected by the worker from a list or lists provided by the Board. The panels sit in Regina and Saskatoon. The decision of the majority of the panel members is binding on both the worker and the Board. This is the final medical appeal.

During the course of its review the committee heard little or no criticism with regard to the medical review panel. This is likely in large part due to the fact that through the selection of panelists the worker is provided with the opportunity to have more input into the process. The impression left with the committee is that while workers appear to have more confidence in the medical review panel than in the medical boards, the Board is reluctant to use the panels. Two reasons suggested for this are that the decision of the panel is final and binding and that it may take longer to convene a panel than a board. Nevertheless, the committee is of the opinion that there is a great deal of merit in the medical review panels.

Recommendation

46 The Workers' Compensation Board should make more frequent use of the medical review panel to obtain a final settlement of a disputed claim.

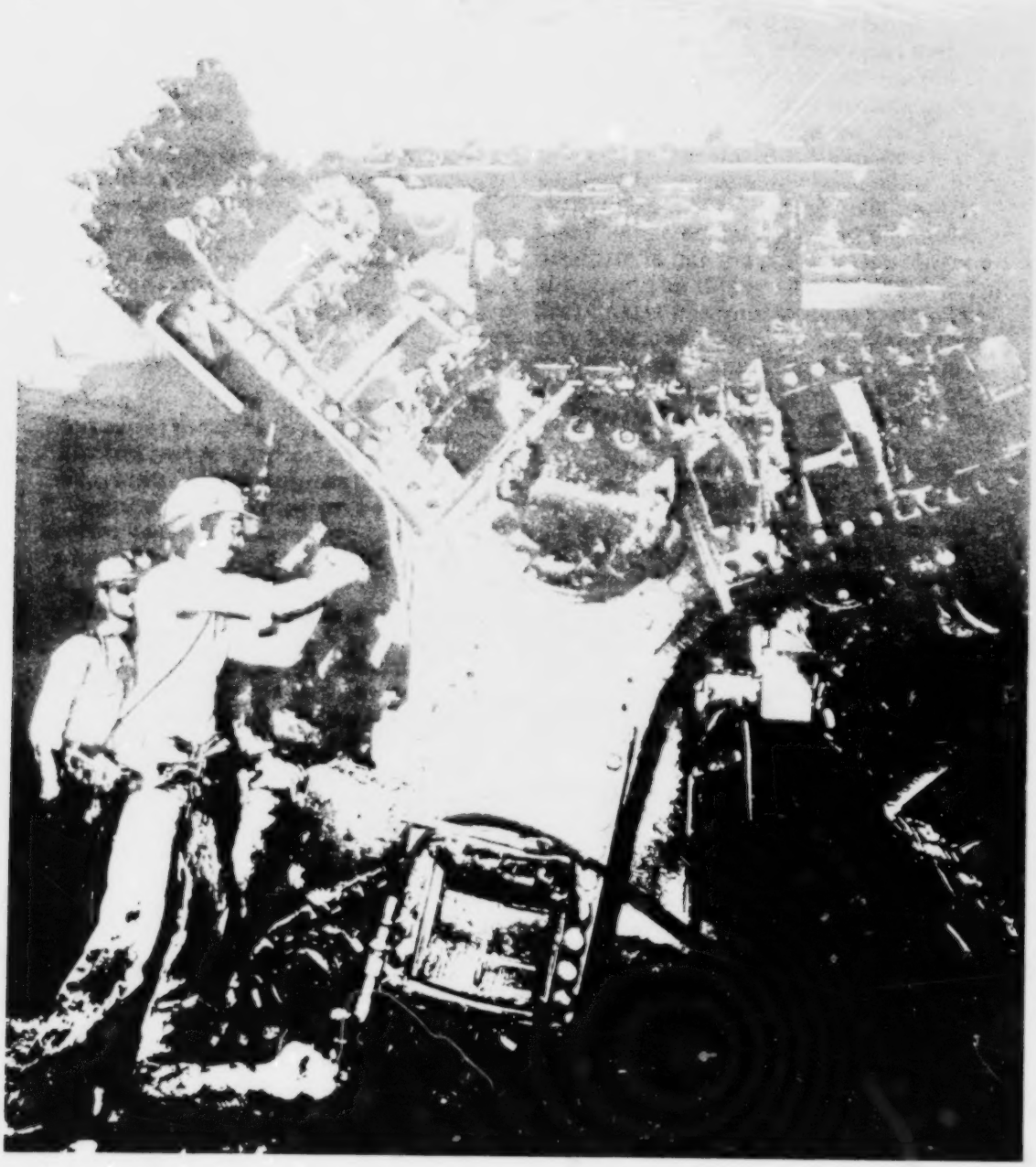
Role of Nurses

It came to the attention of the committee during the review that when accidents occur in areas where a doctor is not readily available, claims for compensation are being delayed until a doctor's report can be made. By way of example, the committee heard from a man who was injured while working in Key Lake. The man received immediate necessary medical attention from a local nurse. However, he had to wait until he was flown out to have an accident report completed by a doctor.

The committee can see no reason why, under such circumstances, the accident report could not be completed by a nurse. A worker injured in a remote area should not be put in the position of having to wait to initiate a claim for compensation simply because a doctor is not available.

Recommendation

47 Where an accident occurs in a remote area and a medical doctor is not readily available the Workers' Compensation Board should initiate a claim for compensation on the basis of an accident report filed by a nurse.



Chapter 7

Communications with Injured Workers and Others

Quality of Communication — Not a New Problem

In the course of its public hearings, the committee received many complaints about the lack of communication or poor communications between the Board and workers. Throughout the hearings the committee received correspondence from Board employees to workers who appeared before it. The correspondence received is only a very small sampling of the letters that go out from the Board on a daily basis, but the sample was sufficient to satisfy the committee that complaints by workers about poor communication are fully justified.

This is one more instance of complaints being made to the present review committee in 1986 that were originally made to previous review committees as long ago as 1973. The 1973 committee devoted eight pages of its report to discussion of and recommendations concerning communications. If the correspondence presented to the committee is any indication, the suggestions made by the 1973 committee have had no effect whatsoever. The following opening comments in the section of the 1973 report dealing with the subject of communications are equally applicable today:

> "Another issue raised time and again throughout the course of our public hearings and in many of the private submissions we received was the issue of communication. The Workers' Compensation Board administers an Act which was referred to throughout the hearings as among the most progressive in Canada. It is equally true, however, that it is among the most poorly understood and poorly explained in Canada. This issue colours all the relationships between the Board and workers, the Board and employers and the Board and the public. The spillover, in terms of distrust and dissatisfaction, is far more severe than is any reaction based on actual decisions or actual results of the adjudication under the Act. It is the Committee's contention that this problem must be tackled head on and on several fronts at once. Some of the steps to be taken to fill this information void are listed below."

Communications with Injured Workers

In the administration of the Act, employees of the Board are entrusted with the responsibility of making decisions that have a profound effect on the personal and economic well being of the worker and the worker's family. Given the nature of the Act, many of the decisions necessarily call for the exercise of discretion on the part of the decision maker. Whether or not the claimant is eligible for compensation, or is sufficiently recovered to be able to return to work and, if so, to what type of work, are but a few examples of the kind of decisions that must be made on a daily basis. No matter how sound the decision may be, it will not be accepted — and it does not deserve to be accepted — if the person communicating the decision does not explain in detail the facts on which the decision has been made and give specific reasons for the decision.

Actual excerpts from a few of the letters that came into the committee's possession during the hearings will serve to illustrate the unsatisfactory communication that is the cause of so many complaints:

> Letter dated 9th April 1985:
>
> "We have received your correspondence of March 26th

1985, requesting a letter from us confirming the rejection of your claim.

While we have accepted responsibility for your arm injury of August 27th 1982, the medical information we have received is quite clearly to the effect that while not fit for your pre-injury employment, you are certainly fit for work within your physical limitations. Information obtained from your employer suggested they are quite prepared to provide you suitable employment within those limitations without any wage loss, and under the circumstances, we find that you have no entitlement to wage loss consideration.

I trust this is the information you required."

Considering that the foregoing letter was written in response to what was obviously a request for an explanation as to why the claim had been rejected the letter is most unsatisfactory. It tells the claimant nothing. It is true that, at the time the letter was written, the medical reports were confidential, but that should not have prevented the writer from explaining to the claimant the gist of what was contained in the medical reports on which the decision was made. There was certainly nothing confidential about the "information obtained" from the claimant's employer. Surely the claimant had the right to know what type of employment the claimant, who obviously had some residual disability, was expected to perform. What "physical limitations" were noted by the doctors? The failure of the writer to supply these essential details is inexcusable.

Letter dated 18th February 1985:

"Your file was again reviewed based on the recent medical information you submitted.

We must again advise we still feel that you are fit for suitable employment. Your restrictions are that you should avoid heavy lifting as well as repeated bending and twisting. It would also seem to appear that you would need to sit from time to time. Whether or not you would be fit to perform janitorial duties may be questionable as you would have trouble doing a lot of bending that would be involved in such work as mopping.

However, the information presently available to us does not allow us to alter our previous decision. As such, benefits will continue at the rate of $39.70 per week."

The foregoing letter is an example of the kind of communication that creates the impression in the mind of some claimants that decisions by Board employees are made in an arbitrary manner and that employees of the Board feel they do not have to give any explanation for their decisions.

Letter dated 6th March 1986:

"Correspondence has been received from you concerning your compensable back claims following which extensive review has again been carried out. Medical documents including your recent submissions do not confirm that you remain totally unfit for any form of employment and restrictions remain of lifting and working in a bent over position.

Certainly you must thoroughly agree that the Earnings Replacement Committee previously extended every benefit of doubt to you as you are well qualified for employment and certainly capable today of earning at least $5.00 per hour on a 20 hour work week. I trust you are also aware that should further appeal be received our deeming by other authorities is subject to review and you could be found to have greater earning potential than we presently recognize which would result in a monthly wage loss decrease."

The foregoing excerpt and particularly the last sentence speaks for itself. No further comment concerning it from the committee is necessary.

Communication of Reasons for Decisions

It is the view of the committee that much ill feeling and distrust on the part of injured workers could be avoided if Board employees at all levels would provide claimants with proper reasons for any decision that is communicated to them. The requirement by any decision maker to give reasons for his or her decisions is so elementary and is so much a matter of common sense and common courtesy that it is almost unbelievable that it should have to be brought to the attention of people who are engaged in making decisions that so greatly affect the personal and economic well being of so many injured workers and their families.

Apart altogether from the customary requirement to give reasons for any decision, there is a statutory obligation to do so. Section 49 of the Act reads as follows:

> "49 Where the board is unable to determine an issue in favour of the person claiming compensation, it shall provide that person with written reasons for its decision."

That section applies to decisions whether made by the Board members themselves or any Board employee engaged in the decision making process. It is apparent from the correspondence presented to the committee that Section 49 of the Act is not being complied with, and that the whole matter of communications is in need of immediate attention. The Board should seek the professional assistance of a consulting firm to assist in resolving the problem.

The communication of decisions is such a critical matter that the committee feels compelled to state in detail what the committee considers must be included in any written decision.

The amount of detail required to be included in a written communication of a decision will depend on the circumstances of each case. If, for example a report of an accident by an employee is confirmed in every respect so that there is no doubt that the accident occurred and that it occurred in the course of employment, there will usually be no need to go into great detail about the circumstances in which the accident occurred. If, on the other hand reports submitted to the Board indicate that there is a conflict about whether an alleged accident occurred at work, or the circumstances surrounding the accident or about the nature and extent of injuries suffered by the claimant, or if it appears that any other issue is likely to arise, it can and should be anticipated that either the employee or the employer is going to question whatever decision is made. In such a situation the employee and the employer will want to know, and are entitled to know, the precise reasons why the Board found in favour of, or against, the employee, as the case may be. The same thing applies where the issue arises over conflicting medical evidence, or any other issue that affects a claim.

The written decision should be such that a person having no previous knowledge of the claim can read the decision and have a thorough understanding of the issue or issues, the gist of the evidence, and the reasons for the decision. In particular the written decision should include the following:

1. **A concise statement of the issue or issues to be resolved and any background information necessary to enable the reader of the decision to understand the question or questions to be resolved;**
2. **A summary of the evidence that was available to the decision maker or decision making body and the sources of such evidence;**
3. **Where the evidence is conflicting, the decision must identify the areas of conflict, which of two or more conflicting pieces of evidence were accepted and which rejected, and the reasons for accepting the evidence on which the decision has been made and for rejecting other conflicting evidence;**
4. **The facts found by the decision maker or decision making body following the review of the evidence and after dealing with conflicting evidence, if any;**

5. **An explanation, where appropriate of how the facts apply to the provisions of the Act; and**

6. **A clear statement of the decision arrived at.**

The committee is of the opinion that the additional time involved in writing proper decisions will be more than made up by the time that will be saved in answering telephone calls and letters that are the inevitable result of failure to give a proper explanation in the first place.

Communications with Employers

It was not only employees who expressed grave dissatisfaction with the failure of the Board and its employees to give reasons for its decisions. Many employers had exactly the same complaint.

As we noted in the first chapter of this report, it is one of the cardinal principles of our system of workers' compensation that the adjudication and adjustment of claims by injured workers is delegated to the Workers' Compensation Board. The employer does not become actively involved in the process of adjudication or settlement of claims and therefore does not have access to files except where provided by statute. The employer does, however, have a very legitimate interest in knowing that the system generally is being operated efficiently and fairly so that legitimate claims are recognized and compensated and improper claims are rejected. In particular, where an employer feels that a claim is improper and has supplied information to the Board to support that view, the employer is surely entitled to an explanation when the Board or its officials rule, despite the information submitted by the employer, that the claim should be allowed. There are, of course, other situations in which the employer will, quite properly in the opinion of this committee want an explanation as to why a particular decision or ruling has been made by the Board or its employees. There is no reason, in the opinion of the committee, why employers should not have explanations regarding Board decisions. Many employers complained that they cannot get a proper explanation when they request it from the Board. Some employers were so frustrated over their inability to obtain explanations of Board decisions when they had so requested, that they suggested that the committee should recommend the employment of an Employer's Advocate, so that there would be a source from which they could find out the reasons for Board decisions. While the committee can understand the frustrations of employers who are unable to obtain an explanation for the decision made by the Board in cases where the employer has a particular concern, it was the feeling of the committee that it was not necessary to go so far as recommending the employment of an Employer's Advocate in order to respond to the legitimate complaints of the employers. The existence of an Employer's Advocate as well as Workers' Advocates might tend to put the employer and the employee in an adversarial position — and neither employers nor workers want that. What the employers do want is a proper explanation of the Board's reasons for making a particular decision. The wishes of the employers can very simply and effectively be met by providing to the employer a copy of the decision that was sent to the employee. If that decision is written in accordance with what the committee has already stated to be the requirements of a written decision for the information of the employee, a copy of that written decision should ordinarily be sufficient to meet the needs of the employer also.

No matter how carefully the decision is written, there will from time to time be cases where some supplementary information is desired by the employer. For that purpose, a senior member of the Board's staff should be assigned by the Board as the person who can be contacted by the employer and who will be responsible for giving the employer any explanation required to supplement the explanation contained in the letter to the employee. The official designated by the Board will not, of course be authorized to release to employers copies of documents on file or to read such documents verbatim to employers. The official will, however, be authorized to explain to the employer, verbally or in writing, the rationale for any particular decision in which the employer has an interest. The committee believes the procedure it has proposed will respond adequately to the legitimate desire of employers to have an explanation for decisions made by the Board and its

officials without violating the principles of confidentiality of Board files and non-intervention by employers in the actual process of adjudication and settlement of claims.

In conjunction with a concerted effort to improve communications with individual employees and employers regarding specific cases, the Board should embark on a program aimed at promoting a much greater understanding on the part of employees and employers generally about the functions and operations of the Board and its policies and procedures. In particular, when the Board first contacts an injured worker regarding a claim, he or she should be provided with a copy of the employees' handbook. Care should be taken to ensure that when policies or procedures are changed or new policies or procedures adopted, employees and employers are fully informed.

Recommendations

48 **The Board should immediately engage the services of a consulting firm to review the state of existing communications and to advise the Board on all aspects of its communications.**

49 **The senior management of the Workers' Compensation Board should provide instruction to all Board employees on the steps that are to be taken to correct the serious deficiencies now existing in the quality of both written and oral communications.**

50 **The members of the Board should make regular periodic checks of correspondence to ensure that a high standard of communication skills is being maintained by all Board employees.**

51 **New Board employees who are required in the course of their duties to communicate orally or in writing with injured workers, employers and others should be given instruction in communications and ongoing in-service training should be given to all employees.**

52 **Written decisions of the Board or any of its employees must contain the essential ingredients as outlined on pages 51 and 52 of this report.**

53 **The Board should provide to the employer of any claimant a copy of any written decision made by the Board or any of its employees that has been communicated to the claimant.**

54 **A senior employee of the Board should be designated as the staff member authorized to give an employer, on request, the reasons for any decision made by the Board or any of its employees with respect to a claim by an employee of that employer; or to give to the employer, on request, any supplementary information with respect to the reasons for a decision on a claim in addition to what is contained in the letter to the employee, but the designated staff member must be bound by the rules of confidentiality referred to earlier in this chapter.**

Where information is given to the employer that was not previously given to the employee, the additional information that was given to the employer shall be communicated in writing to the employee.

55 **Major decisions by the Board with respect to claims, as well as major Board orders or directives to its staff regarding policy or procedural matters should be made public.**

Chapter

8 Workers' Compensation Board: Organization and Administration

Composition of the Workers' Compensation Board

The legislation stipulates that the Workers' Compensation Board is to consist of at least three members, one of whom is to be appointed as chairman of the Board. Traditionally, the Board has consisted of a chairman and two other members; one representative of labour, the other of management.

This system is based on a balance between labour and management in order to ensure that both sides have confidence in the Board's ability to function as a fair adjudicative mechanism. The committee contends that this system should be enshrined in law.

Recommendation

56 The Workers' Compensation Act should be amended to stipulate that the Board consist of a chairman and other members who are equally representative of management and labour.

Assignment of Claims and Rehabilitation Officers by Specific Industry Groups

Although this issue has already been addressed by the committee in Chapter 4 by way of comments and a recommendation, it believes it is worthwhile to reiterate that the assignment of claims and rehabilitation officers on the basis of specific industry groups will enable them to gain familiarity with an industry and the types of accidents and injuries associated with that industry. This in turn will promote consistency in the adjudication of claims and will better equip the rehabilitation officer to assist the injured worker, thereby improving the efficiency of the Board's operation.

Administration of Benefits

Another issue relating to the administration of claims concerns the method of paying benefits when the responsibility for a claimant shifts from the claims area to the rehabilitation area.

It has been the practice of the Workers' Compensation Board to pay wage loss benefits through the claims department until the worker is considered medically fit to return to work. At this point the worker's file is transferred from the claims department to the rehabilitation department which pays job search benefits to the worker while he or she is looking for work. In actual fact, these job search benefits are a continuation of wage loss benefits in another form. In the meantime, the worker has received a letter from the claims department indicating that he or she is considered fit to return to work and his or her benefits are going to be terminated forthwith. Shortly after receiving this letter, the worker is informed that he or she will be paid job search benefits by the rehabilitation department for a period of time.

Representation made to the committee suggested that the practice of transferring responsibility for payment of wage loss benefits is counter-productive and causes the claimant a great deal of unnecessary anxiety and confusion. It results in far too much of a rehabilitation officer's valuable time being spent on administrative details. The prime concern of a rehabilitation officer is, and should be, assisting the worker to return to the workforce; not authorizing payment of wage loss benefits.

Also, this practice distorts the costs charged against rehabilitation. In examining the distribution of rehabilitation expenditures for 1985, the committee noted that just over one-third of the monies charged against rehabilitation (the greatest portion of the rehabilitation budget) was for job search benefits. If this amount was

instead charged against claims, then one would have a better idea of the amount of money being spent on actual rehabilitation programs. It is the feeling of the committee that the rehabilitation department should be responsible for costs associated strictly with rehabilitation programs; costs related to wage loss support should be handled by the claims department.

Recommendation

57 Payment of all wage loss benefits should be maintained by the claims department and monies paid as wage loss benefits should not be accounted for as part of the cost of rehabilitation.

The committee hopes that the implementation of this recommendation will streamline the administration of benefit delivery, reduce anxiety on the part of injured workers and more accurately depict the true cost of rehabilitation.

Investment Policy

The investments of the Workers' Compensation Board have not been reviewed by previous committees; however, given the size of the Board's assets the committee felt it necessary to examine the Board's investment policy. The review committee received information with respect to the investment policy during general information meetings with the Board and its staff. In addition, a meeting was held with the staff to receive specific information on investment policy and reporting. The committee also requested from the Board information concerning investment objectives and policy direction, including copies of all minutes and/or directives of the Board and all correspondence between the Board and the investment manager for the period January 1, 1983 to December 31, 1985. In response to this request, the committee was provided with two investment reviews dated July 11, 1984 and November 29, 1985.

In the July, 1984 investment review the asset distribution of June 30, 1981 is compared with that of May 30, 1984 as shown in Table 1. This marks an extremely long period of two years and eleven months between reports from an investment manager to the administrator of an investment fund.

Table 1

Saskatchewan Workers' Compensation Board
Asset Distribution — Actual and Recommended
June 30, 1981 and May 30, 1984

Asset Distribution	Actual June 30, 1981	Actual May 30, 1984	Recommended Previous	Recommended Next 12 Mos.	12 Mos. Strategy
		Percent of Portfolio			
Short Term	2.5	8.3	3.0	7.0	Decrease
Federal	27.5	19.8	22.0	20.0	Min. Chg
Prov.-Mun.	41.0	37.7	35.0	33.0	Decrease
Corporate	11.5	15.7	15.0	15.0	Min. Chge
Mortgages	12.7	11.8	15.0	13.0	Increase
Equities*	4.8	6.5	9.0	10.0	Increase
Real Estate	0	0.2	1.0	2.0	Increase

*Includes convertibles

Source: Investment Review, July 11, 1984, Current Investment Strategy
Saskatchewan Workers' Compensation Board

Prior to the 1984 review, the recommended percent of portfolio for equities was 9.0%. The twelve month strategy was to increase equities to 10.0% beginning July 11, 1984. It was noted in the July, 1984 review that the "proposal to raise equity exposure reflects the historically superior returns stocks have generated against fixed income securities." Despite this, according to the November 29, 1985 investment review, the actual equity exposure dropped from 6.5% in May, 1984 to 3.4% in October, 1985, as illustrated in Table 2.

Table 2

Saskatchewan Workers' Compensation Board
Asset Distribution — Actual and Recommended
May 30, 1984 and October 30, 1985

Asset Distribution	Actual May 30, 1984	Actual Oct. 30, 1985	Recommended Next 12 Mos.	Recommended 12 Mos. Strategy
	Percent of Portfolio			
Short Term	8.3	12.6	5.0	Decrease
Bonds*	73.2	73.5	75.0	Increase
Mortgages	11.8	10.2	7.0	Reduce
Equities**	6.5	3.4	13.0	Increase
Real Estate	0.2	0.3	0	Eliminate

*Includes coupons
**Includes convertibles

Source: Investment Review, November 29, 1985, Current Investment Strategy
Saskatchewan Workers' Compensation Board

The investment manager's recommendation continued to be that equity exposure be increased. A powerful and logical argument for a much higher exposure to equities was presented in Schedule B of the November review, based on both the Workers' Compensation Board's cash flow requirements and historically documented higher returns on stocks (see Appendix 1). However, an examination of the book value of investments as provided in the Board's Annual Reports of 1981 to 1985, indicates a decrease in the equity content of the portfolio from 6.4% in 1981 to 2.9% in 1985 (1982 — 5.9%, 1983 — 5.9%, 1984 — 4.5%). This trend is in direct conflict with recommendations made in three investment reviews since June 30, 1981.

The review committee has received no written evidence of communication between the Board and the investment manager which would explain why the equity content of the portfolio has been reduced. The committee did perceive however, in its meetings with the staff and the Board, a policy of using equity investments for short term expediency, rather than maintaining an investment strategy that would combine the protection of capital with maximum income. For example, both the staff and the Board proudly related how, after the sale of equities in the Continental Illinois Bank resulted in a substantial loss in 1984, they sold other successful United States equities so that the investment return in 1984 was satisfactory. In fact, this is a very short term strategy that is detrimental to consistent, long term investment policy.

Secondly, the Board's explanation for the low equity exposure at December 31, 1985, was that a good deal of cash was required during 1984 to implement the immunization policy (i.e. protection against future liabilities). To suggest that in an investment portfolio with $223,000,000.00 in fixed income securities (which are as easily traded as equities) it was necessary to sell equities with a book value of $5,887,426.00 to provide cash flow, contrary to the investment manager's consistent recommendation to increase equity content, is to acknowledge that long term strategy is secondary to short term manipulation.

The impact that equity content can make on an investment portfolio is clearly illustrated in Tables 3 and 4 below.

Table 3

Return on Investments
An Investment Fund of $230,957,000 Based on Asset Distribution of Workers' Compensation Board Fund
December 31, 1985

Asset Class	Asset Distribution* ('000)	Percent of Total	Five Year Annual Return**	Five Year Dollar Return ('000)
Total	$230,957	100.0%	—	$146,203
Gov't of Canada	60,281	26.0	9.32%	33,838
Provincials	108,975	47.0	9.51	62,656
Municipals	3,380	1.6	9.96	2,054
Industrial Bonds	35,980	15.7	10.42	23,081
Treasury Bills	14,753	6.4	13.35	12,852
Equities	7,588	3.3	20.54	11,722

*Source: 1985 Annual Report of the Saskatchewan Workers' Compensation Board
**Source: Investment Review, November 29, 1985

Table 4

Return on Investments
An Investment Fund of $230,957,000 Based on Asset Distribution with 25 Percent in Equities

Asset Class	Asset Distribution ('000)	Percent of Total	Five Year Annual Return*	Five Year Dollar Return ('000)
Total	$230,957	100.0%	—	$193,498
Gov't of Canada	46,191	20.0	9.32%	25,929
Provincials	85,454	37.0	9.51	49,132
Municipals	2,310	1.0	9.96	1,403
Industrial Bonds	27,715	12.0	10.42	17,779
Treasury Bills	11,548	5.0	13.35	10,060
Equities	57,739	25.0	20.54	89,195

*Source: Investment Review, November 29, 1985

Table 3 shows a five year dollar return of $146,203,000.00, with 3.3% of the portfolio in equities. The five year dollar return of an investment fund of the same value with 25 percent of the total fund in equities would be $193,498,000.00 as shown in Table 4. The difference between these two figures indicates that an additional five year gain of $47,295,000.00 or an average annual gain of $9,459,000.00 would be possible with 25 percent of the fund in equities. The failure of the Workers' Compensation Board to implement the investment manager's recommendations with regard to equity content has had and will continue to have a negative impact on the annual return on investments.

In addition to investment policy, the review committee feels it must also comment on investment reporting. While the format of the information included in the Board's annual reports satisfies the requirements of the Provincial Auditor and legislation, it does not provide employers and workers with the information necessary to assess the administration and management of the

investments. Such information is an important factor in providing benefits to workers and maintaining reasonable assessment rates for employers.

Recommendations

58 A complete review of the Workers' Compensation Board's investment policies should be undertaken, including:

(a) the setting of long term requirements and objectives;

(b) the procedure required to ensure consistent management of the portfolio; and

(c) the monitoring of investment performance.

The creation of an investment advisory committee composed of members from outside the Board and its staff would facilitate the setting of a long term strategy and provide the discipline required to adhere to the policy.

59 The Workers' Compensation Board's Annual Report should include an investment review similar to the annual statements provided to pension fund sponsors and beneficiaries to provide more accurate information with regard to the administration and management of the fund's investments.

Chapter

9

Workers' Advocates

The purpose of the Workers' Advocates is to assist injured workers in resolving disputes of their claims with the Workers' Compensation Board. The advocates are employees of the Department of Labour and as such are completely independent of the Workers' Compensation Board. The office was established in 1972, in response to a recommendation made by the 1971 task force. Because of the importance of the office to the workers' compensation system and in view of its relation to a former review committee, the committee feels it has a special responsibility to ensure the proper functioning of the advocate's office.

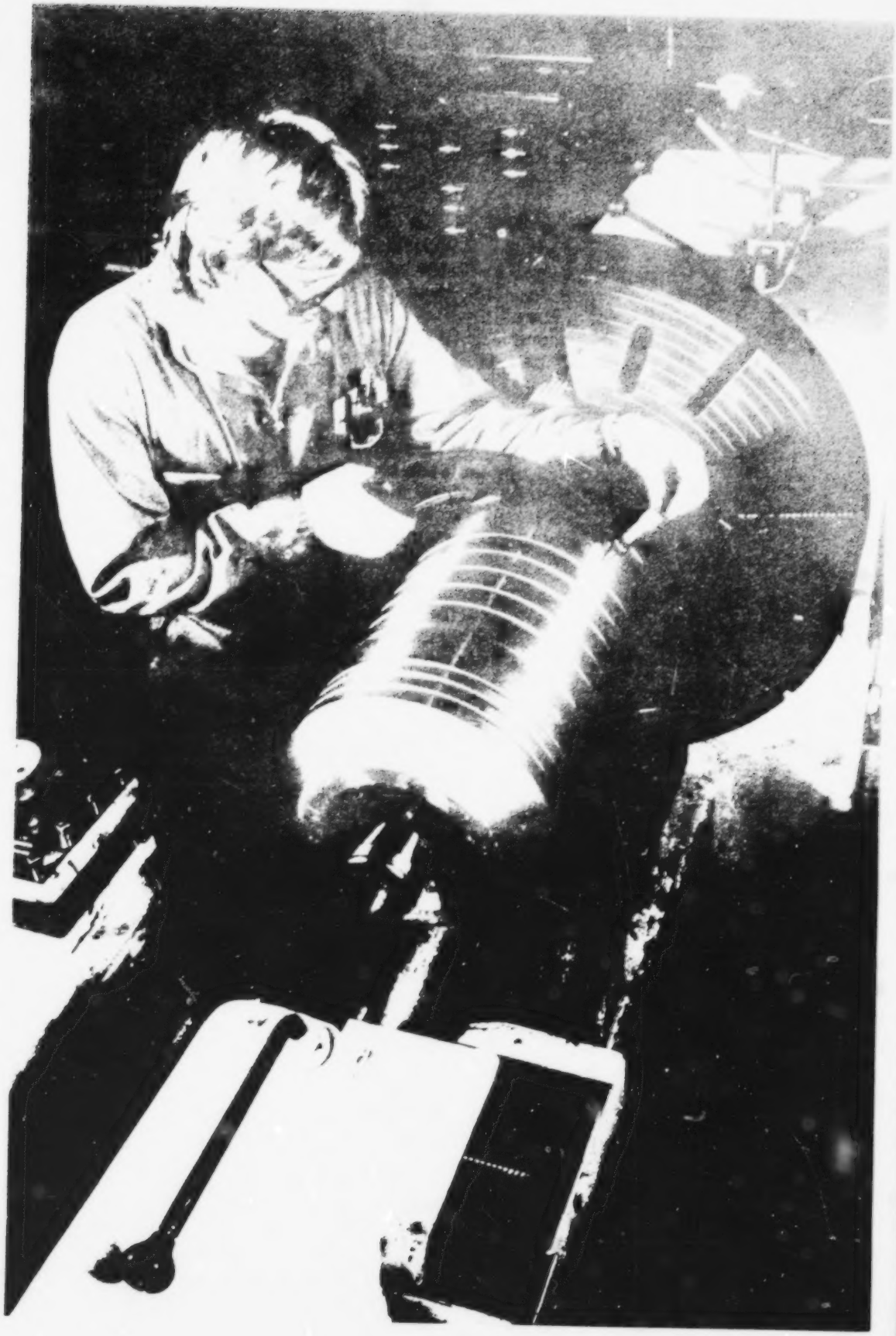
It became quite apparent during the course of the public hearings that the ability of the workers' advocates to serve their clients was suffering because of an unmanageable backlog of files. The committee heard on numerous occasions that injured workers, on calling the office for assistance, were being informed that they would have to wait nine months before an advocate could open a file and proceed with an appeal. This delay unnecessarily prolonged the settlement of claims which resulted in further hardship and anxiety for injured workers and their families. This is clearly contrary to the original intent of the office.

A second issue centres on the relationship of the workers' advocates to the Workers' Compensation Board. The advocate's primary role is to represent injured workers on appeal to the Board but they are also in a position to comment from time to time as to the impact of Board policies on the compensation system. They have a somewhat unique perspective of the system and feel it important to communicate their concerns to the Board. At present they are able to do this only on an individual basis and with regard to specific cases. The advocates feel more formal dialogue is necessary and the committee agrees such dialogue would be useful to both the Board and advocates.

Recommendation

60 The Department of Labour should undertake a comprehensive review of the Workers' Advocates Office with the short term objective being to reduce the backlog of cases and, for the longer term, to establish administrative procedures which will ensure such a backlog does not develop again and will further ensure a continuing dialogue between the office and the Workers' Compensation Board.

In achieving these objectives however, the individual attention injured workers receive must not be jeopardized as a result of any changes within the office. This is an extremely important aspect of the office which the committee feels must be maintained. In addition, it should be recognized that by the adoption of the committee's recommendations, in particular those concerning deeming, rehabilitation and communications, the number of instances requiring appeal, and therefore the services of the workers' advocates, should be greatly reduced. It is anticipated these measures will help lessen the workload of the advocate's office. The committee also notes that, given that information on claim files is available to workers, a claimant may wish to handle his or her own appeal, which would further assist in reducing the advocates' workload.



Chapter

10 Scope of the Act

This chapter discusses a series of issues which address coverage of the legislation. Who is affected by the Act, how they are affected, as well as the question of compensation for occupational disease are serious issues which have been, and remain, part of an ongoing debate over the role and coverage of our workers' compensation system.

The term "workers' compensation" implies that the Act extends compensation coverage to all workers. While the Act applies to a great number of workers in Saskatchewan, protection is by no means available to all workers. Two occupations in particular which are excluded from the Act are farm workers and domestics.

Farm Workers

Coverage of farm workers under the Workers' Compensation Act has been discussed at great length and recommended by previous review committees. Inclusion of this group of workers is dependent on the support of farmers and the farm workers themselves. A consensus exists among organizations representing agricultural interests as to the need for coverage. Prior to its dissolution the Saskatchewan Federation of Agriculture strongly supported inclusion of farm workers in the Act. This consensus is not shared, however, by the individual farmer.

During the course of the present review the committee received no strong representation from any group on this issue. Nevertheless it feels this issue is of sufficient importance to warrant a recommendation. Although farm workers are part of an industry that is perhaps unique in terms of structure and working conditions no fundamental difference exists between a farm worker and an industrial worker. The committee can determine no logical reason why farm workers as a group should be excluded from the Act.

Recommendation

61 Farm workers should be included under the scope of the Workers' Compensation Act.

The committee wishes to note that "farm workers" refers to people who work for wages on farms. For the individual farmer, coverage should continue to be voluntary.

The committee is aware that the Board has been active in promoting the advantages of farmers participating in workers' compensation. The committee complements the Board on this practice and encourages its continuation.

Domestic Workers

As a group, domestics are relatively small in number and cover a wide variety of jobs including paid housekeepers, nannies, babysitters as well as others who work for pay in private homes. Working conditions vary greatly making it impossible to assess, for compensation coverage, every person who hires a casual babysitter or occasional housekeeper. The committee is convinced however that in certain situations where a domestic is working full-time, an employer-employee relationship exists, and therefore the principles of the Workers' Compensation Act should apply.

Recommendation

62 Full-time domestics (those working for one employer for more than 24 hours a week) should be included under the scope of the Workers' Compensation Act.

Contractors and Subcontractors

Three issues emerged during the review concerning contractors and subcontractors. The first involves automatically charging to the contractor's account, claims costs associated with an accident involving the subcontractor.

Sections 132 and 133 of the Act read as follows:

> "132(1) The worker of a contractor or subcontractor executing any work for the purposes of an industry carried on by another person, in this section referred to as the principal, is deemed to be the worker of the principal unless the contractor or subcontractor is, in respect of that work:
>
> (a) assessed, or added and assessed, as the case may be, as an employer; or
>
> (b) individually liable for payment of compensation;
>
> or unless the board finds and declares that the responsibility of the contractor or subcontractor is sufficient protection to his workers for the benefits provided for by this Act.
>
> (2) Where a principal has made payment with respect to an assessment or compensation or has furnished medical aid that, other than by reason of subsection (1), he would not have been liable to pay or furnish, he shall be entitled to reimbursement from the contractor or subcontractor to the extent that the board finds that contractor or subcontractor would have been liable."
>
> "133(1) Where a person, whether carrying on an industry included under this Act or not, in this section referred to as the principal, contracts with any other person, in this section referred to as the contractor, for the execution by or under the contractor of the whole or any part of any work for the principal, it is the duty of the principal to ensure that any sum that the contractor or any subcontractor is liable to contribute to the fund is paid and, where the principal fails to do so and the sum is not paid, he is personally liable to pay that sum to the board.
>
> (2) The board shall have the same power and be entitled to the same remedies for enforcing payment under subsection (1) that it possesses in respect of an assessment under this Act.
>
> (3) Where the principal is liable to make payment to the board under subsection (1), he is entitled to be indemnified by any person who should have made the payment and is entitled to withold, out of any indebtedness due to that person, a sufficient amount in respect of that indemnity.
>
> (4) All questions as to the right to and the amount of such indemnity shall be determined by the board."

No objection was raised to the principal contractor being made liable, in the circumstances stated in the Act, for payment of assessments arising out of work performed by a subcontractor, with the right of the contractor to recover the amount of such assessments from the subcontractor. It was pointed out, however, that the contractor is not in a position to control the manner of operation of the subcontractor's equipment or the work practices of the subcontractor. It was therefore suggested that the cost of accidents arising out of the subcontractor's operations should not be allowed to affect the safety record of the contractor or the contractor's eligibility for merit rebate. The committee supports that position.

Recommendation

63 A contractor should continue to be responsible for assessments with respect to a subcontractor in accordance with the Act. In addition, the Workers' Compensation Board should create fully funded sub-classes for independent subcontractors to ensure their operations do not affect the safety record of the contractor.

The committee understands the Board has already implemented this proposal so far as regards water hauling, so there will presumably be no difficulty in implementing the foregoing recommendation on a wider basis.

The second issue has to do with the contravention of Section 164(1) of the Act which states:

> "164(1) Except as provided in this Act, no employer shall, either directly or indirectly, deduct from the wages of any of his workers any part of any sum that the employer is or may become liable to pay to the fund or otherwise under this Act, or require or permit any of his workers to contribute in any manner towards indemnifying the employer against any liability that he incurs under this Act."

While the committee fully supports the right of the contractor to recover from the subcontractor any amount paid by the contractor to the Board by way of assessments arising out of labour supplied by the subcontractor, concern was expressed about the system being abused by an employer deducting workers' compensation assessments from a person who is, in actual fact, an employee and not a subcontractor. The Board claims some difficulty in enforcing this section of the legislation because they have trouble identifying these employers.

Much of the problem has to do with the lack of clarity in the definition of an employee and a subcontractor. The Labour Standards Act is much clearer in this regard and it would appear that this is as much of a labour standards issue as it is a workers' compensation issue.

After considering this issue, the committee does not feel it can offer any solutions other than to suggest that the Board refer to the Labour Standards Branch of the Department of Labour any case where it appears that assessments are wrongfully deducted from the wages of persons who are, in fact, employees rather than subcontractors, as one means of enforcing the existing legislation.

Finally the committee received a complaint about a case where a subcontractor went out of business leaving money owing to the Board. A contractor who had subcontracted to that person received a demand for the amount of all outstanding assessments due by the subcontractor, including assessments arising out of projects for which the contractor had no responsibility.

The Board's policy of adding a subcontractor's delinquency to the contractor's own account is not fair or appropriate. When this is done by the Board arbitrarily, it automatically puts the contractor's account overdue, even if it is later determined that the Board's demand was not correct.

The committee wishes to remind the Board that the contractor is liable only for assessments arising out of wages paid in connection with work done by the subcontractor for that particular contractor, and is not liable for assessments arising out of labour supplied by the subcontractor for other contractors.

Recommendations

64 The Workers' Compensation Board should consult with the contractor in order to determine the labour content of the contract. The appropriate assessment on only the labour portion of the project should not be added to the contractor's account until seven days after it has been agreed to by the Board and the contractor.

65 The Workers' Compensation Board should improve its monitoring of employers with delinquent accounts so that information is readily available to contractors when clearances are requested.

Occupational Disease

During the course of the review, various groups commented on the need for the Workers' Compensation Board to accept claims based on recognition of occupational disease. Examples include: firefighters and heart and lung disease resulting from exposure to toxic chemicals; health care workers and low back syndrome, stress, and exposure to hazardous substances during the course of treatments such as chemotherapy. In addition, the subject of video display terminals and pregnancy was raised within the committee.

The committee notes that the Board is moving to fulfill a recommendation of the 1982 review committee to develop a list of occupational diseases. The existence of such a list however does not infer automatic acceptance of a claim resulting from a disease which may be listed. In adjudicating or accepting a claim the Board examines current information about the disease as well as the merits of the particular case. Problems occur when a claim is rejected, as the onus is then on the injured worker, and those supporting him or her, to appeal the decision and build a case to substantiate his or her claim. A major obstacle encountered by an individual in developing his or her case is lack of information on the nature of the disease, current research and acceptance of similar claims in other jurisdictions.

The primary source of information on occupational diseases is the Canadian Centre for Occupational Health and Safety. This information is accessible via computer terminals. Other information concerning recognition of similar claims in other jurisdictions is of equal importance and should be available from the Board itself.

Recommendation

66 The Workers' Compensation Board and the Workers' Advocates Office should have computer terminals linking each to the Canadian Centre for Occupational Health and Safety database. Any worker involved in an appeal should be given the opportunity to use this database to help him or her in preparing his or her appeal. The availability of these terminals should be noted in the Workers' Information Handbook on Workers' Compensation.

Chapter

11 Other Considerations

Notification of Injury

The committee received representation during the course of the hearings asking for a reduction in the period in which an employee must report an injury; and, that the requirements for notification of an injury be the same for both the employer and the employee. Current legislation requires employers to report an injury within three days of becoming aware of its occurrence. An employee, on the other hand, is to notify his or her employer of an injury as soon as possible and is allowed six months in which to make a claim for compensation.

In discussing the issue, the committee noted that it is difficult to establish a time frame that is fair. The question becomes one of how to encourage the reporting of an injury without limiting access to a claim. The longer time frame was established for workers because an injury may not become immediately apparent. From this point of view it is reasonable. However, the committee also recognizes that the longer a worker waits to report an injury and claim compensation, the more difficult it may be for the Board to verify the accuracy of the claim. The concern is that a long time frame may lull workers into a false sense of security and actually hinder them in their efforts to obtain compensation.

The early reporting of an injury is important because it provides a reference point for all parties involved. Employees would be spared from possible hardship by establishing their injury and their claim promptly. The committee believes that a shorter time frame would encourage reporting, make it easier for the Board to verify the accuracy of a claim and, as a result, speed up an employee's entitlement to compensation. The committee sees no reason why the time frame for notification of injury cannot be the same for both employers and employees.

Recommendation

67 The Workers' Compensation Act should be amended to require that employees and employers must report an injury within five working days after becoming aware of its occurrence.

In making this recommendation, the committee wishes to point out that Section 47 of the Act which permits claims for compensation to be submitted outside the time frame will remain in place, providing an allowance for cases where the disability does not become apparent until some time beyond the date of the accident.

Workers' Compensation Board as an Assignee

The situation involving a third party action arises where an individual is injured while at work and legal responsibility rests with an individual who is not covered by workers' compensation. In such cases the injured worker has full rights to workers' compensation. Either that worker or the Board may also launch legal action against the third party.

The Board has experienced no difficulty in undertaking an action with regard to an accident involving injuries. However, the Board's ability to recover costs in a third party action involving fatalities was recently challenged. A question arose as to the Board's status to maintain an action in respect of those workers who died as a result of the accident. It was argued that where the accident results in death, action can only be maintained pursuant to the Fatal Accidents Act, which requires that action be commenced for the benefit of the beneficiaries by the executors or administrators of the estate. The committee believes that the Board's ability to commence a third party action in such situations should not be hampered.

Recommendation

68 In cases of work-related accidents resulting in death, the Workers' Compensation Board should be able to commence an action in its own name without complying with the procedures outlined in the Fatal Accidents Act.

Section 40 subsection (a) of the Workers' Compensation Act should be amended to read as follows:

> **"40 (a) bring an action in its own name to recover the amount of the compensation payable notwithstanding any provisions of The Fatal Accidents Act; or".**

Approval of Regulations and Orders Made by The Workers' Compensation Board

In order to assist it in carrying out its daily functions, the Board from time to time makes interpretative orders. The present legislation requires that Cabinet must approve any regulation or order made by the Board. It was suggested to the committee that while there is no difficulty with requiring Cabinet approval for regulations, it is totally unworkable to require every Board order to be approved by Cabinet. The committee agrees with this position.

Recommendation

69 The Workers' Compensation Board should not be required to obtain Cabinet approval for Board orders. Section 181 of the Workers' Compensation Act should be amended by deleting the words "or orders", to require Cabinet approval only for regulations made by the Board.

Collection of Overpayments

The rapid processing of claims to minimize any financial hardship to injured workers is a priority for the Workers' Compensation Board. When this is combined with the volume of claims processed and the complex nature of the Act, overpayments are bound to occur. For instance a lag time from when the worker returns to work to when the Board receives notification of this may result in an overpayment of compensation benefits.

At present there is no legislative provision which authorizes the Board to recover overpayments. It is felt that such a provision is necessary to facilitate ease of recovery.

Recommendation

70 The Workers' Compensation Board should be empowered to recover overpayments made to injured workers. The Workers' Compensation Act should be amended by adding the following. This would be a new section to follow Section 180 in the Miscellaneous portion of the Act.

> **"When compensation payments have been made by the Board to a worker or dependent in an amount in excess of that to which he or she is entitled, the amount of the overpayment may be recovered by the Board."**

Chapter

12 Accountability of the Workers' Compensation Board

The recommendations of this and previous review committees have been made after extensive consultation with employer and employee groups, injured workers and others who are vitally concerned with the legislation and its administration by the Workers' Compensation Board. It is through the review process that the public has, or ought to have, the opportunity of participating in bringing about necessary changes in legislation and improvement in delivery of the system by the Board. The recommendations of the committee and recent review committees are, therefore, as they ought to be, not so much the personal views of committee members, as a reflection of the views of members of the public who have a vital interest in the system.

Recommendations of review committees fall generally into two categories:

(1) Recommendations for changes in legislation;

(2) Recommendations for changes in Workers' Compensation Board policies, procedures and practices designed to improve the fairness and efficiency of the system.

The committee appreciates that it is for the government of the day to decide what recommendations for changes in legislation should or should not be accepted. In fact, during the past 10 years or more, successive governments have responded in a very positive way to the recommendations of review committees. Important changes have been made in the legislation including some significant and beneficial changes brought about by the Legislature in 1985.

The response from the Board, on the other hand, to recommendations aimed at dealing with complaints about the administration of the Act has been far less than satisfactory. The present committee, for example, received complaints about Board procedures and practices that were similar to complaints heard by previous review committees as far back as 1973 and which those committees recommended should be corrected.

The Board, like every other public institution, must be responsive to legitimate demands for changes aimed at improving the delivery of the service it is responsible for providing. There is no point in incurring the expense of a review committee, in holding public hearings, and in expending all the time and effort that is devoted to formulating recommendations in response to legitimate concerns expressed at these public hearings if the Board is not going to respond to calls by review committees for sorely needed reforms in the policies, practices and procedures of the Board and its department heads and employees.

Steps must be taken to ensure that the Board is made accountable for the implementation of review committee recommendations in order that legitimate concerns expressed at public hearings are promptly and satisfactorily addressed.

Recommendation

71 Section 162 of the Act should be amended by adding a provision requiring the Board to file each year with the Minister a report to be tabled in the Legislature showing the progress made by the Board towards implementing the recommendations of the present and subsequent committees in so far as it is within the power of the Board to implement such recommendations. The report should also include an explanation for any delay in implementing the recommendations. This report should be submitted to the Minister before the anniversary date on which the review committee's report is made public.

Appendix

1 Extract From Investment Review, November 29, 1985

Schedule B

Portfolio Policy — Liabilities Attendant to Current Workers' Compensation Act

It is our understanding that, unlike the terms of the previous Saskatchewan Workers' Compensation Act, the new Act does not lend itself to a specific determination of the fund's ultimate liabilities. In large part, the magnitude of the liabilities will be determined by:

(a) the success of rehabilitation programs and the consequent employability of claimants; and

(b) future rates of general inflation and its impact on the cost of living.

Any detailed forecast of these two factors, even with the benefit of several years of claims experience, would be subject to a wide margin of error. However, despite the inherent vagaries, it is possible to outline the "worst case" circumstances with respect to the development of the fund's liabilities. The "worst case" scenario would be a combination of very poor rehabilitation experience, such that claimants would be entitled to maximum benefits for life, and a sustained period of high rates of inflation.

Together these factors would result in liabilities which were very long-term in nature and increased at a rate related to inflation (i.e. cost of living, wage rate increases etc.).

As a consequence, to address these potential liabilities, a portion of the fund's portfolio should be committed to investments which are long-term (25 years plus) and have the capability of consistently producing real rates of return. The only major conventional asset class which has met these two criteria is common stocks. Common stocks, since they do not mature, are very long-term investments. In addition, history indicates that they have an excellent record of producing real rates of return.

This fact was perhaps best documented in a U.S. study first published in 1976 by Roger G. Ibbotson and Rex A. Sinquefield, **Stocks, Bonds, Bills and Inflation: Year-by-Year Historical Returns (1926-1974)**. The study was subsequently updated to the end of 1981.

Table 1

U.S. Asset Classes
Total Annual Compound Rates of Return

	56 Yrs 1926-1981	25 Yrs 1957-1981	10 Yrs 1972-1981	5 Yrs 1977-1981
Common Stocks	9.1%	7.9%	6.5%	8.1%
Long-Term Corporate Bonds	3.6	3.2	3.0	−1.2
Long-Term Government Bonds	3.0	2.6	2.8	−1.0
U. S. Treasury Bills	3.0	5.4	7.8	9.7
Inflation	3.0	5.0	8.6	10.1

In a similar way, two professionals at the University of Western Ontario, using the Ibbotson Sinquefield methodology, recently compiled a Canadian version of these rate of return statistics: **Canadian Stocks, Bonds, Bills and Inflation: (1950 - 1983)**. In summary, the results of this analysis were as follows (Table 2):

Table 2

Canadian Asset Classes
Total Annual Compound Rates of Return

	34 Yrs 1950-1983	25 Yrs 1959-1983	10 Yrs 1974-1983	5 Yrs 1979-1983
Canadian Stocks	11.46%	10.78%	14.07%	20.54%
Industrial Bonds	5.23	6.39	9.15	10.42
Municipal Bonds	5.21	6.42	8.92	9.96
Provincial Bonds	4.70	6.04	8.49	9.51
Long Term Canadian Bonds	4.14	5.33	7.43	9.32
Treasury Bills	5.47	6.87	10.58	13.35
Consumer Price Index	4.76	5.56	9.22	9.35

Clearly, both of these carefully documented studies indicate that common stocks have, over a variety of time frames, produced superior rates of return. This is particularly evident when inflation-adjusted returns (real rates) of the various asset classes are compared. These high rates of return are a result of capital appreciation compounded over time. Of course, over short time periods (1 — 2 years) capital gains may not be achievable. Indeed, significant negative returns are possible during periods of depressed market conditions. However, history indicates that over any extended time frame, common stock returns have performed exceptionally well. Furthermore, assuming real economic growth will continue over the coming years, common stock investment is likely to continue to be the best performing asset class on a long-term basis.

Recommendation

It is recommended that the Workers' Compensation Injury Fund adopt an investment policy to increase its common stock investment exposure. It is proposed that **25.0%** of the portfolio be devoted to **common stocks** and that this objective be systematically developed **over the next five years**.

The underlying rationale for this recommendation is:

1. Given what we currently know of the fund's liabilities, 25% is a conservative target for common stocks. Perhaps over time, as more empirical data is developed on claim experience, there will be justification to adjust this preliminary target upward.
2. A dollar averaging program of 5.0% incremental common stock exposure per year, for five years, should easily be accommodated out of combination of cash flow and portfolio reconstructing. The initial portfolio restructuring would not require the realization of any net book losses.
3. The commencement of this program would co-ordinate well with a new common stock management program being developed by the Department of Finance.

Appendix

2 Publicity and Schedule of Public Hearings

Government of Saskatchewan
Information Services

Legislative Building
Regina, Canada
S4S 0B3
(306) 787-6281

News Release

IMMEDIATE RELEASE
Dec. 4, 1985

Saskatchewan

WORKERS' COMPENSATION REVIEW GROUP APPOINTED

Labor Minister Lorne McLaren today announced the appointment of a committee to review the Workers' Compensation Act 1979.

The committee has been set up in accordance with a provision of the act which calls for a review of the legislation every four years.

Chairman of the committee is Judge Alastair Muir of Moose Jaw. Members are: Wes Norheim, Canadian Labor Congress regional director of organization for the Prairie provinces; Gerry Munt, Saskatchewan Federation of Labor; Greg Zaba, construction unions; Virginia Kutzan, Saskatchewan Union of Nurses; Eric Antonini, president Antonini and Sons Ltd.; Norm Brown, plant manager Degelman Industries Ltd.; Denis Magnan, benefits and compensation director Federated Co-operatives Ltd.; Glenn Maxwell, personnel superintendent Cory division Potash Corporation of Saskatchewan.

Judge Muir and Norheim previously were members of review committees.

The committee is to review all matters pertaining to the compensation act and report its findings to the minister of labor. The committee will be receiving submissions from interested groups and individuals, the minister said.

Letter to Associations, Groups and Unions

Saskatchewan

Workers' Compensation
Review Committee

670 Toronto Dominion Building
1914 Hamilton Street
Regina, Saskatchewan
S4P 4V4

December 16, 1985.

Dear Sir/Madam:

As you may be aware, a committee has been formed to review and report on all matters concerning The Workers' Compensation Act and its Regulations. It is the duty of this committee to gather as much information as possible on Workers' Compensation and to submit a report to the Minister of Labour when the committee has completed its task.

For the committee to properly do its job, it must receive information and opinions from as broad a spectrum of the public as possible. To accomplish this hearings will be scheduled. The dates and locations of these hearings will be separately advertised.

If you are interested in making either an oral or written submission, or both, to the committee please foward the enclosed form by January 6, 1986. We will then contact you prior to the hearings to arrange an appropriate time and place for presentation. The deadline for the submission of written briefs is February 28, 1986, to give the committee the opportunity to study the briefs prior to the public hearings.

In the meantime, if you require any further information or assistance, please do not hesitate to contact the committee office. The phone number is 787-8396.

Yours truly,

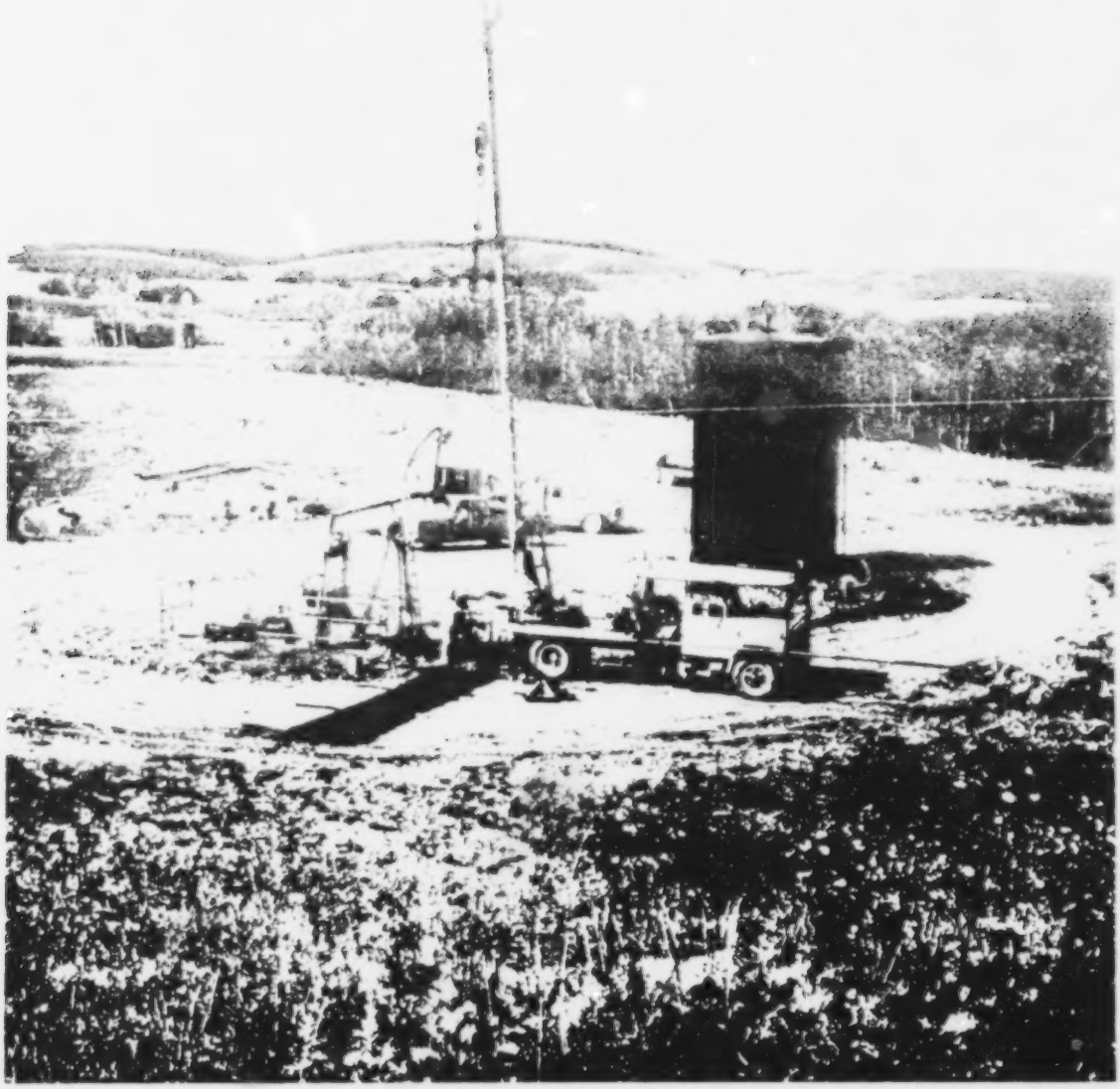
John Boyd,
Executive Secretary.

Schedule of Public Hearings

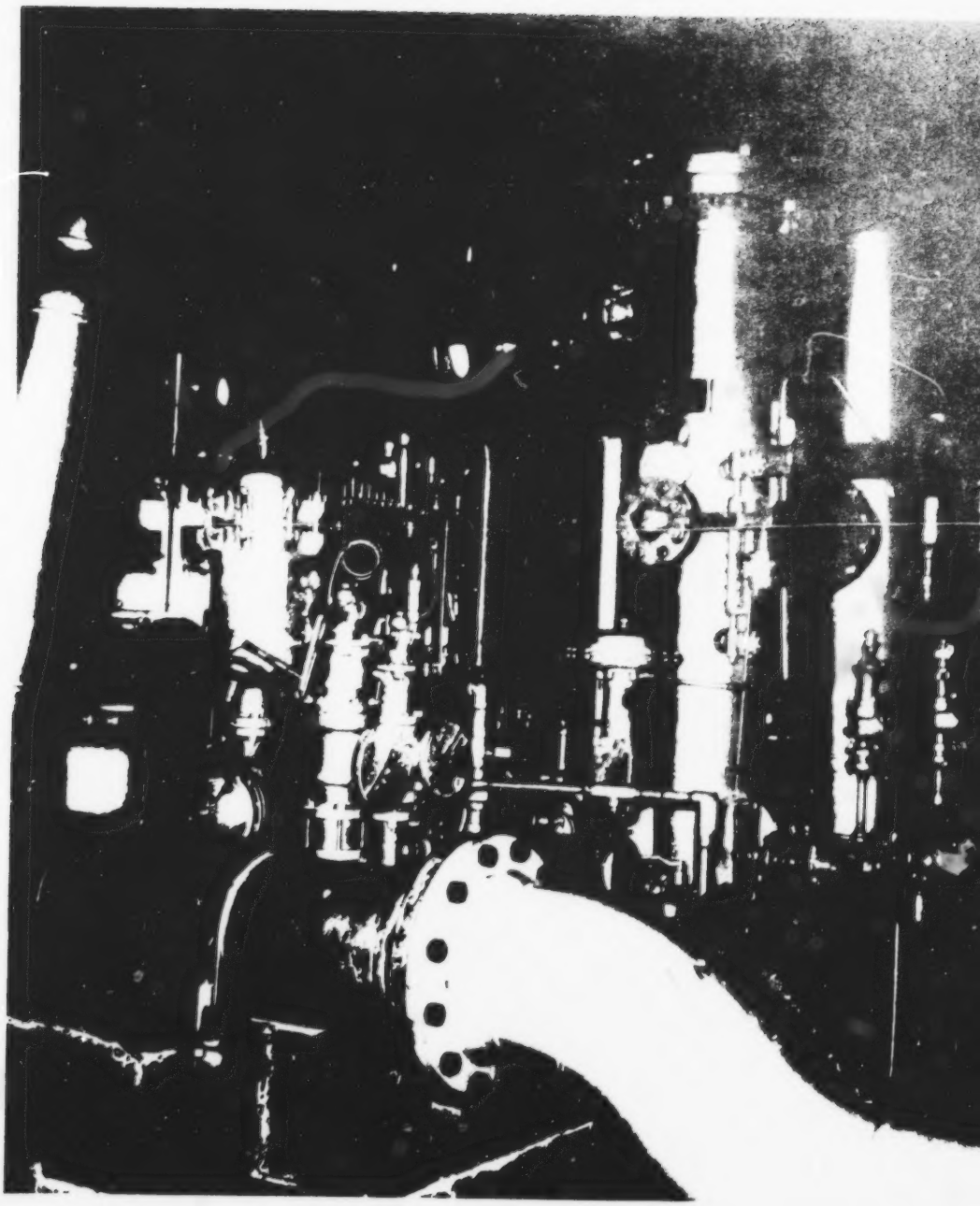
Regina March 17-21, 1986
Saskatchewan Centre of the Arts

Saskatoon April 14-16, 1986
Saskatoon Public Library

Prince Albert April 17 and 18, 1986
Will Inns



Appendix

3 Organizations Appearing at the Public Hearings or Providing a Written Submission

Canadian Federation of Independent Business — Regina, Saskatchewan
Canadian Manufacturers' Association — Regina, Saskatchewan
Canadian Pacific Ltd. — Saskatoon, Saskatchewan
Canadian Petroleum Association — Calgary, Alberta
Canadian Society of Safety Engineering — Saskatoon, Saskatchewan
City Fire Fighters' Union — Regina, Saskatchewan
City of Saskatoon — Saskatoon, Saskatchewan
Energy and Chemical Workers Union — Regina, Saskatchewan
Extendicare Health Services Inc. — Saskatoon, Saskatchewan
Genstar Corporation — Winnipeg, Manitoba
Grain Services Union — Regina, Saskatchewan
Intercontinental Packers Limited — Saskatoon, Saskatchewan
PCL Construction — Saskatoon, Saskatchewan
Prairie Implement Manufacturers Association — Regina, Saskatchewan
Professional Institute of Public Service Canada — Regina, Saskatchewan
Public Service Alliance of Canada — Saskatoon, Saskatchewan
Saskatchewan Abilities Council — Saskatoon, Saskatchewan
Saskatchewan Accidental Injury Victims Association — Regina, Saskatchewan
Saskatchewan Action Committee, Status of Women — Regina, Saskatchewan
Saskatchewan Chamber of Commerce — Regina, Saskatchewan
Saskatchewan Construction Association Inc. — Regina, Saskatchewan
Saskatchewan Federation of Labour — Regina, Saskatchewan
Saskatchewan Government Employees' Union
Saskatchewan Health-Care Association
Saskatchewan Home Builders' Association Inc. — Regina, Saskatchewan
Saskatchewan Injured Workers' Association — Regina, Saskatchewan
Saskatchewan Mining Association — Regina, Saskatchewan
Saskatchewan Teachers' Federation — Saskatoon, Saskatchewan
Saskatchewan Union of Nurses — Regina, Saskatchewan
Service Employees International Union — Saskatoon, Saskatchewan
The Energy Doctor — Saskatoon, Saskatchewan
United Steelworkers of America — Regina, Saskatchewan
United Steelworkers Local 7689 — Saskatoon, Saskatchewan